

STREET
IMPROVEMENT ACTS
of CALIFORNIA
1919

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To my friend Gilbert W. Smith
with the highest esteem and best
regards of the compiler
W. H. Childs.

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California. Laws, statutes, etc.

Revised Edition

STREET IMPROVEMENT ACTS OF CALIFORNIA

(including Amendments of 1919)

Compiled by

WM. R. CHILDS



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PREFACE

In view of the rapidly increasing activity along the line of street improvements in Municipalities, due in part to prosperous conditions, and in main to keep pace with our ever-increasing splendid system of State Highways of California, we have deemed it essential that our booklet on Improvement Acts be revised and extended. As this book is intended primarily for the use and guidance of City Attorneys, Superintendents of Streets and other officials directly concerned with street proceedings, we have extended its scope to include, in addition to the "Improvement Act of 1911," such other Acts as have a direct bearing upon this subject.

The "**Improvement Act of 1911**," has come into such general use throughout the State, that practically all of the street improvements are now being performed under this Statute. As many Court decisions covering disputed points on Street Laws have been rendered during the last few years, we have had a digest made of late decisions of the higher Courts which will greatly add to the value of the revised book, which also contains the Amendments of the 1919 Session of the Legislature, thereby bringing it up to date.

As in our former booklet, we have included the "**Improvement Bond Act of 1915**," as this form of bond seems gaining in popularity.

Many instances have come to our attention in which changes of grade on streets have been necessary before paving of a permanent character could be undertaken. In some cases attempts have been made to change these grades without following the course of procedure set forth in the Statutes, with the result that Contractors have refused to enter contracts for street work, on the advice of their attorneys, on the sole ground that the grades of the streets proposed to be improved had not been legally established. This has necessitated the abandonment of the street proceedings and the institution of proper establishment of grades, with a resultant delay of many months in the performance of the work. For this reason

we have included the "**Change of Grade Act of 1909,**" which has proven most satisfactory for this purpose.

Similar instances have occurred where it has been deemed expedient to open new streets, or to close up and abandon existing streets prior to the starting of improvement proceedings. The "**Street Opening Act of 1889**" is the most widely used in this connection.

We have also included under the same cover, the so-called "**Vrooman Act**" and the "**Local Improvement Act of 1919,**" so that contained in one volume will now be found all of the Acts in general use by Municipalities in relation to street work, and believe that the new publication will meet with instant favor among those City Officials most concerned with this intricate subject.

CONTENTS

	Pages
IMPROVEMENT ACT OF 1911.....	11- 77
IMPROVEMENT BOND ACT OF 1915.....	79- 88
VROOMAN ACT	89-133
STREET OPENING ACT OF 1889.....	135-144
CHANGE OF GRADE ACT OF 1909.....	145-149
LOCAL IMPROVEMENT ACT OF 1919.....	151-164

Each act amended to date.

Clearly annotated throughout for quick reference.

Court decisions showing latest rulings.

I N D E X

IMPROVEMENT ACT OF 1911

PART I

Page

Sec. 1.	Public streets defined.....	11
Sec. 2.	What work may be done.....	11
Sec. 3.	Resolution of intention.....	13
Sec. 4.	When chargeable on district.....	16
Sec. 5.	Notice of improvement.....	16
Sec. 6.	Protest and hearing.....	18
Sec. 7.	Jurisdiction—when acquired	19
Sec. 8.	Plans and specifications.....	20
Sec. 9.	Descriptions by reference.....	21
Sec. 10.	Inviting sealed proposals.....	21
Sec. 11.	Notice of awarding contract.....	23
Sec. 12.	Owners may take contract.....	23
Sec. 13.	Re-advertising for bids.....	24
Sec. 14.	Delinquent contractors	24
Sec. 15.	Bond for faithful performance.....	25
Sec. 16.	Protesting erroneous proceedings.....	25
Sec. 17.	Advancing incidental expenses.....	25
Sec. 18.	Conditions in contract.....	26
Sec. 19.	Bond for labor and material.....	30
Sec. 20.	Methods of assessment	
Sub. 1.	Frontage assessment	31
2.	Main street crossings.....	32
3.	Main street terminations.....	32
4.	Alley and Main street crossing.....	32
5.	Alley and sub-division street crossings.....	32
6.	Alley terminations	33
7.	Work on one side of street.....	33
8.	Public property	33
9.	When owners may grade.....	34
10.	Diagram of assessment district.....	35
11.	Railroad property	36
Sec. 21.	Making the assessment.....	37
Sec. 22.	Warrant	38
Sec. 23.	Recording warrant, etc.	39
Sec. 24.	Demanding payment	40
Sec. 25.	Contractors return	41
Sec. 26.	Final objections	42
Sec. 27.	Contractors suit	44
Sec. 28.	New assessment permitted.....	46
Sec. 29.	Selling premises on execution.....	47
Sec. 30.	Partial assessment	47
Sec. 31.	Repairs	47
Sec. 32.	Suit for repairs.....	48
Sec. 33.	Additional penalty for neglect.....	49
Sec. 34.	Tenant may pay assessment.....	49
Sec. 35.	Service of notice.....	49
Sec. 36.	Accepted streets (Repealed).....	49
Sec. 37.	Records of Street Superintendent.....	50
Sec. 38.	Duty of Street Superintendent.....	50

INDEX—Continued

	Page
Sec. 39. Damages, Defective streets.....	51
Sec. 40. Partial expense from treasury.....	51
Sec. 41. City Engineer	51
Sec. 42. Inspector	52

PART II

Sec. 43. Change of grade	52
Sec. 44. Claiming damages	53
Sec. 45. Commissioners	53
Sec. 46. Damages and benefits.....	54
Sec. 47. Report of Commissioners.....	54
Sec. 48. Notice of hearing report.....	54
Sec. 49. Objections to report.....	54
Sec. 50. Advertising for bids.....	55
Sec. 51. Making assessment	56
Sec. 52. Assessment roll	56
Sec. 53. Collecting assessments	56
Sec. 54. Sale of property.....	57
Sec. 55. Redeemable within one year.....	57
Sec. 56. Separate funds	58
Sec. 57. Notice of damages awarded.....	58
Sec. 58. Condemnation proceedings	58

PART III

Sec. 59. Serial bonds may be issued.....	59
Sec. 60. When and where payable.....	59
Sec. 61. Notice in resolution of intention.....	60
Sec. 62. Notification to treasurer.....	60
Sec. 63. Form of bond.....	61
Sec. 64. Limitation, Twenty-five dollars.....	62
Sec. 65. Owner may stop issuance.....	62
Sec. 66. Description of bonds.....	63
Sec. 67. Penalty for default.....	63
Sec. 68. Sale of property.....	64
Sec. 69. Treasurer's affidavit.....	66
Sec. 70. Costs and fees.....	66
Sec. 71. Certificate of Treasurer.....	66
Sec. 72. Lien on the property.....	66
Sec. 73. Redemption	66
Sec. 74. Recording certificate	67
Sec. 75. Deed to purchaser.....	67
Sec. 76. Absolute title	68
Sec. 77. Railroad property	69
Sec. 77a. Improvements by railroad companies.....	71
Sec. 78. No protest	74

PART IV

Sec. 79. Definitions	74
Sec. 79a. "Places" defined	76
Sec. 80. Hearings	76
Sec. 81. Publication and posting	76
Sec. 82. Construction of acts.....	77
Sec. 83. Saving Clause	77
Secs. 84, 85, 86, 87, 88 and 89 (repealed).	

IMPROVEMENT BOND ACT OF 1915

	Page
Sec. 1. Serial bonds may issue.....	79
Sec. 2. Street work acts affected.....	79
Sec. 3. Bonds—when and where payable.....	80
Sec. 4. Declaration in resolution and notices.....	80
Sec. 5. Issuance of bonds.....	81
Sec. 6. Form of bond.....	82
Sec. 7. Coupons	83
Sec. 8. Annual series	83
Sec. 9. Advanced maturity	83
Sec. 10. Registration of bonds.....	84
Sec. 11. Unpaid assessments a trust fund.....	84
Sec. 12. Installment assessments	85
Sec. 13. Interest on assessments.....	86
Sec. 14. Unpaid assessments—entered on assessment roll.....	86
Sec. 15. Assessments released	87
Sec. 16. Special tax to protect city.....	87
Sec. 17. Effect of certificate and deed.....	87
Sec. 18. Definitions	88
Sec. 19. Directory provisions	88
Sec. 20. Effect of act.....	88

VROOMAN STREET ACT

PART I

Sec. 1. Public streets defined.....	89
Sec. 2. Cities may order streets improved.....	89
Sec. 3. Resolution of Intention. Publications and notices posted. Objections, etc	90
Sec. 4. Council may order work done after majority of frontage petitions	94
Sec. 5. Procedure preliminary to letting contracts. Award of contract, etc.	94
Sec. 5½. Notice of faulty proceedings. Objections, when deemed to be waived.....	96
Sec. 6. Superintendent of Streets, power and duties. Work and materials, assessment and expense.....	97
Sec. 6½. Securing claim for labor, etc., for street and sewer work. Filing of claim and action on.....	97
Sec. 7. Method of assessment.....	98
Sub. 1. Expenses of work.....	98
2. Street crossings	98
3. One street terminating in another.....	98
4. Alley crossings	98
5. Alley crossings	99
6. One alley, etc., terminating in another.....	99
7. Work on one side of street.....	99
8. Property belonging to U. S., State or city front on work.....	99
9. Owners may do grading.....	100
10. Diagram of district. Plan of assessment.....	101
11. Railroad subject to assessment.....	102
12. Railroads to improve streets between tracks..	102
13. Council may include various kinds of work in its order	104

INDEX—Continued

	Page
Sec. 8. Superintendent to make assessment for work. Assessment, how made and what to show.....	104
Sec. 9. Form of warrant. Record of warrant. Delivered to contractor. Course to be pursued in case of error.....	105
Sec. 10. Demand for payment of assessment. Return of warrant or failure to return. Extension of time. Interest as penalty	106
Sec. 11. Owners may object to warrant. Hearing and appeal.....	107
Sec. 12. Contractor may sue on delinquent assessment. Attorneys' fees. Demand in writing prerequisite. Proof of service. Consolidation of actions. Evidence of regularity. Redemption	108
Sec. 12 $\frac{1}{2}$. New assessments and bonds when old have been declared invalid. Court to point out irregularity, and order new assessment. City council may set aside assessment. Procedure	109
Sec. 12 $\frac{1}{2}$. City council may use discretion in completion of improvements	112
Sec. 13. Repairs. Contract for repairs may be let. Contractor may sue owners. Penalties for neglect.....	112
Sec. 14. Certificate of superintendent. Prima facie evidence, etc.	113
Sec. 15. Penalties	114
Sec. 16. Who deemed to be the owner.....	114
Sec. 17. Tenants or lessees.....	114
Sec. 18. Records of Superintendent of Streets.....	114
Sec. 19. Notices, how served.....	115
Sec. 20. City to keep streets in repair (Repealed).....	115
Sec. 21. Superintendent shall keep office and direct clean sewers	115
Sec. 22. Duties of Superintendent and shall furnish bond.....	115
Sec. 23. City not liable for damages. Who liable.....	115
Sec. 24. City council may construct sewers and manholes, etc., and provide for cleaning same. Remonstrance.....	116
Sec. 25. Duty of city council to repair and water. Street contingent fund. Work, how done.....	116
Sec. 26. May designate what fund to be used. Remainder to be assessed proportionately.....	117

PART II

Sec. 27. Sewers, construction of and assessment for.....	117
Sec. 28. Election to incur indebtedness. Tax to pay interest.....	117
Sec. 29. Bonds	118
Sec. 30. Bonds, sale of	118
Sec. 31. Bonds not sold for less than par.....	118
Sec. 32. Proceeds of sale of bonds deposited in city treasury. Sewer fund	118
Sec. 33. Plans and specifications. Advertisements. Bids.....	119

PART III

Sec. 34. City Engineer to do surveying. Definitions.....	119
Sec. 35. Superintendent of Construction. Compensation.....	121
Sec. 36. Act repealed	121
Sec. 37. Time of taking effect on prior statutes or proceedings.....	122

INDEX—Continued

PART IV.

	Page
Sec. 38. How changes of street grades are made.....	122
Sec. 39. Petition showing damage through change of grade.....	123
Sec. 40. Board of Commissioners, who shall constitute.....	123
Sec. 41. Oath to be taken.....	123
Sec. 42. Witnesses may be subpoenaed.....	123
Sec. 43. Damages to be assessed. Report to city council.....	123
Sec. 44. What report must contain. Majority report.....	124
Sec. 45. Unknown owners. Errors. Filing of report to be published	124
Sec. 46. Objections to be filed in writing. Hearing. New assessment. Advertising for bids. Proceedings. Awards.....	124
Sec. 47. City Clerk to certify contract. Cost of work to be assessed	125
Sec. 48. City Clerk to certify copy of report to Superintendent of Streets. Lien	126
Sec. 49. Notice that assessment due. Payment of. Delinquency. Publication. Sale. Deed. Redemption. Fund to be created by Treasurer.....	126
Sec. 50. How notice of payment of damages to be made.....	128
Sec. 51. Condemnation of premises. Precedents of proceedings. Deficiency, how paid. Priority of warrants.....	128
Sec. 52. Application of other provisions of original act. Work in progress to be continued. Ratification of subsequent proceedings	129
Sec. 53. Act liberally construed	129
Sec. 54. Council to fix time and place of hearings.....	129
Sec. 55. Description by reference sufficient.....	130
Sec. 56. City may become contractor. Proceedings.....	130
Sec. 57. Public work in unincorporated territory. Terms interchangeable	130
Sec. 58. County Street Superintendent. Compensation.....	131
Sec. 59. Phraseology of bonds changed.....	132
Sec. 60. Payment from general fund.....	132
Sec. 61. Highway lighting system. Ordinance to describe district. Tax for maintenance.....	132
Sec. 62. Names for roads.....	133

STREET OPENING ACT OF 1889

Sec. 1. Laying out, opening, closing streets, etc.....	135
Sec. 2. Resolution of intention	135
Sec. 3. Notice, posting and publishing	135
Sec. 4. Objections may be filed.....	136
Sec. 5. Decision of council to be final.....	136
Sec. 6. Jurisdiction	136
Sec. 7. Commissioners to employ assistance.....	137
Sec. 8. Expenses charged the particular work required.....	137
Sec. 9. Assessment for damages	137
Sec. 10. Report to council with plat of assessment district.....	137
Sec. 11. Report, what must specify	138
Sec. 12. When set down to unknown owners	138
Sec. 13. Filing of report and plat, and publication of.....	138
Sec. 14. Objections must be in writing.....	138
Sec. 15. Duty of clerk of council.....	139

INDEX—Continued

	Page
Sec. 16. Duty of superintendent of streets on receiving certified copy of report as confirmed by council.....	139
Sec. 17. Payments for land and improvements, when and how made	140
Sec. 18. Condemnation proceedings	141
Sec. 19. Duty of treasurer on payment of warrants.....	141
Sec. 20. Supplementary assessment to meet delinquency.....	141
Sec. 21. Proceedings to settle defective title.....	142
Sec. 22. Proceedings when boundaries of districts of lands affect the whole city	142
Sec. 23. Use of words "work" and "improvement," etc.....	143
Sec. 24. Proceedings commenced before passage of act to be continued by resolution of council.....	143
Sec. 25. Act to be liberally construed.....	144

CHANGE OF GRADE ACT OF 1909

Sec. 1. City Council empowered to change grades.....	145
Sec. 2. Resolution of Intention. Publication and posting of notices	145
Sec. 3. Property owners may protest. Hearing of protest.....	146
Sec. 4. If not protests filed. Action of City Council.....	147
Sec. 5. Who deemed to be owner. Work on one side of street....	148
Sec. 5a. Proof of publication of any notice made by affidavit.....	148
Sec. 6. Definition of phrases.....	148
Sec. 7. Which acts are not affected by this act. Act liberally construed	149
Sec. 8. Act effective immediately	149

LOCAL IMPROVEMENT ACT OF 1919

Sec. 1. Public streets defined	151
Sec. 2. What work may be done.....	151
Sec. 3. Report of city engineer	152
Sec. 4. Resolution of intention	153
Sec. 5. Established grade	154
Sec. 6. Publishing and posting notices.....	154
Sec. 7. Notifying property owners by mail.....	155
Sec. 8. Invite sealed bids	155
Sec. 9. Protests and hearings	156
Sec. 10. May reject bids	156
Sec. 11. If bidder is negligent, readvertise for bids.....	157
Sec. 12. Contractors' bonds	157
Sec. 13. Bond for labor and material.....	158
Sec. 14. Superintendent of streets gives written contracts.....	158
Sec. 15. Assessment, levied and filed	159
Sec. 16. Protests on assessments	159
Sec. 17. Issuance of bonds	160
Sec. 18. Form of bonds	161
Sec. 19. Bonds registered	162
Sec. 20. Sale of bonds	162
Sec. 21. Sale for delinquent assessments	162
Sec. 22. Special tax to protect city	163
Sec. 23. Effect of certificate of sale and deed.....	163
Sec. 24. Assessments may be released.....	164
Sec. 25. Definition of "owner"	164
Sec. 26. Title of act	164

INTRODUCTORY

Too much stress cannot be laid upon the importance of following a correct method of procedure in the preparation of Street Work Proceedings under the "Improvement Act of 1911," in preliminary steps as well as in the proceedings themselves, and for this reason we have outlined the most important steps in their order.

1. Open Streets.

None but open streets can be improved.

Section 1 of the Act defines Public Streets, while Sub. 7 of Section 79 gives further definition as those which have been dedicated and accepted according to law or in common and undisputed use by the public for a period of not less than five years next preceding. It is therefore essential that the Board know that the streets proposed to be improved are open streets in accordance with these provisions.

2. City Base or Datum Plane of Reference.

Must be established by Ordinance or Resolution.

All street grades are established by reference to some fixed elevation commonly called "City Base," and it is imperative that this line be so determined by Ordinance or Resolution that there can be no chance for errors arising on future work. Where there is a U. S. G. S. Bench mark in the City already fixed, it is well to use this, but otherwise some permanent point must be established.

3. Grades of Streets.

Must be fixed before passage of Resolution of Intention.

Much trouble has arisen over the subject of grades, and care should be exercised in the original establishment of grades with relation to travel by the public, and particularly with regard to the disposition of storm waters. Probably the most satisfactory method of doing this is by Ordinance of the Council. Various methods are used for this purpose; in some cases the grades are fixed along property lines, sometimes along the center line of the street and again along the top face of the curbs. The latter

method probably presents the fewest objections, as then a change in the width of sidewalks or a change in the crown of the street due to different types of pavement adopted, cannot effect the flow of storm waters. Where grades are established at the four corners of the intersections it must be clearly set forth that the grade of the street shall be uniform between the points fixed, and this holds true where breaks in the grade are necessary. It must be set forth that the grades between fixed points shall be a straight line.

4. Change of Grade.

Must be done under some change of grade act.

In cases where it is deemed expedient to change the grade of a street before doing the work, it is imperative that this be done in accordance with the provisions of some one of the Acts of the Legislature provided for this purpose. Many instances have arisen particularly in cities situated in the hills, where a change of the established grade seriously damaged the abutting property, and the property owners are clearly entitled to a hearing before the Board on the subject of the change as provided by these Acts. Changing the grade after the passage of the Resolution of Intention invalidates the contract and assessment.

5. Plans and Specifications.

Must be adopted before passage of Resolution of Intention;

Resolution ordering Engineer to prepare plans and specifications must be passed;

Resolution adopting plans and specifications must precede Resolution of Intention;

Plans and specifications must be certain and complete.

Section 8 provides that "Before passing any resolution for the construction of improvements, plans and specifications and careful estimates of the costs and expenses thereof shall be furnished to said city council, if required by it, by the city engineer of said city." The logical time to adopt plans and specifications is prior to the passage of the Resolution of Intention, and the method now nearly universal, and which should be followed, is for the council to pass a resolution, directing the city engineer to prepare plans and specifications and an estimate of the cost of the proposed improvement, and after these have been submitted and approved,

to pass a resolution adopting the plans and specifications as prepared and submitted. The essence of these is certainty. Nothing should be left to the discretion of the street superintendent which can be made definite in the plans and specifications, as controversies continually arise in which it is claimed that the plans and specifications are not clear upon certain points.

6. Resolution of Intention.

- Must contain name of street or streets to be improved;
- Description of the work;
- Improvement Act under which work is to be done;
- Notice of the time and place for hearing protests;
- Direction of clerk to publish;
- Designation of newspaper in which to be published;
- Direction of Street Superintendent to post Notices of Improvement;
- Exception of work already done, if any;
- Exception of railroad work, if any;
- Exception of Public Property, if desired, from assessment;
- Description of District, if done under District Assessment plan, with express declaration that this is the District benefited and to be assessed;
- Reference to Plans and Specifications adopted;
- Fund out of which assessments on public property shall be paid (Sec. 20, Sub. 8) ;
- Designation of Bond Act to be used;
- The term of Bonds and their rate of interest;
- The fund out of which partial expense may be paid by City (Sec. 40) ;
- Reference to License Agreement if patented pavements or appliances are used.

As the Resolution of Intention is the object of attack in most street work litigation, it should be most specific and comprehensive. The work to be done must be clearly and accurately set forth. If it is desired that the cost and expenses be assessed upon a district, the extent of the district must be definitely bounded and the Resolution must contain an express declaration that this is the district benefited by said work or improvement and to be assessed to pay the cost and expenses thereof. Where serial bonds are to be issued, the particular Bond Act must be specified and also the term of years for which they are to run, and the interest they are to bear. It is not sufficient to state that the bonds shall extend over a period "of not to exceed" a

given number of years. The exact term of years must be determined by the Board before the issuance of the Assessment and Warrant, and no official has the power to do this. If definitely declared in the Resolution of Intention, the matter is at an end, otherwise the Board must pass a special Resolution before the Assessment can issue. Where a part of the work (such as curbs, gutters or sidewalks) has already been done to line and grade and is in good condition, it is proper to except such work where done, and the Resolution should so state. Where any public property fronts upon the proposed work or is included within the district, special attention should be given to Sub. 8 of Sec. 20 on this subject before preparing the Resolution. Many Boards have been brought into embarrassing situations through being confronted with the payment of assessments against public property, largely through their lack of attention to this important subdivision.

The writer has had many years experience dealing with proceedings and assessments in small municipalities and is very much in favor of the District plan of Assessment as best suited to their particular requirements. Innumerable features present themselves at the time of spreading the roll in small cities that can be taken care of in a District, which, if done on the frontage plan would amount to confiscation of some of the property. The assessment of property occupied by irrigation canals and the distribution of the cost of necessary bridges over such canals, will serve as a concrete example of some of the difficulties referred to.

7. Notices of Improvement.

Must contain Heading in letters at least one inch in length;

Statement of passage of Resolution of Intention, its number and its date;

Statement of day, hour and place where protests will be heard;

Reference to Resolution of Intention for further particulars;

It should contain all of the subjects enumerated under "Resolution of Intention" as noted above, which will be fully covered if the Resolution of Intention is printed at full length in the Notice.

The posting of the Notices of Improvement is a matter which often does not receive sufficient care. They should be so placed

that no controversy can arise as to the distance between them and that all points in this section be fully covered. A large proportion of the appeals from assessments taken of recent years allege that the notices were improperly posted, and several bitterly contested suits to set aside assessments have this as their principal point. It is not sufficient to guess at the distance, but the Street Superintendent must know by actual measurement that the distance is not over three hundred feet. While not required, it is well to have the Affidavit of Posting set forth that the distances have been measured. In the case of work done under the District plan, all of the streets within the District must be posted. In any event, the posting must be completed at least ten days before the date set for hearing protests, as required in Sec. 5.

8. Protest and Hearing.

Must be in writing.

Action of the Board must be determined by Resolution.

The Council does not acquire jurisdiction to order the proposed work done until after the time set for hearing protests as set forth in Sec. 3, and the method of dealing with this is fully set forth in Secs. 6 and 7. In case a protest is presented as provided, the Council must give due hearing, and in the event that it is overruled, it is well to pass a resolution so stating.

9. Resolution Ordering the Work.

Must contain a description of the work;

A declaration that the Resolution of Intention has been published;

A declaration that the Notices of Improvement have been posted;

Must refer to Resolution of Intention for further particulars;

The time fixed for the opening of bids which shall be not less than ten days from the time of first publication or posting;

A direction to the City Clerk to post "Notice Inviting Sealed Proposals," with specifications, for five days;

A direction to the City Clerk to publish such Notice twice, and designating the newspaper for that purpose.

After the Council has acquired jurisdiction, they may immediately pass a resolution ordering the work and inviting sealed

proposals. This resolution should contain a description of the work and assessment district, and contain a clause directing the City Clerk to post Notice Inviting Sealed Proposals, with specifications, and also to publish such notice in a designated newspaper and must fix the time for receiving bids for the work. In case the Council desires that the work be done under the direction of the Engineer instead of the Street Superintendent, as provided in Sec. 18, they must pass a resolution so setting forth within ten days after the passage of the resolution ordering the work, and it is customary to pass such a resolution immediately after the passage of the order of work, at the same meeting.

10. Receiving Bids.

Must be publicly opened and declared;

Action of the Board must be by Resolution.

At the time set for opening bids, the same must be publicly opened and read, and the minutes of the meeting must expressly state that this was done. Where the work is awarded, the Council must pass a resolution of award, setting forth the name of the successful bidder and the prices bid and directing the Clerk to post notice of award and also to publish the same in a newspaper designated in the resolution.

11. Contract.

Must contain reference to Award;

Description of work;

Exceptions, if any;

Reference to Plans and Specifications;

Reference to License Agreements covering patents;

Description of the District;

Reference to Serial Bonds, giving Act and term and rate of interest;

Time for starting work;

Time for completion;

The prices to be paid for the work;

A clause that the work shall be done under the direction of and to the satisfaction of the Street Superintendent, unless the Council has previously passed a resolution directing that said work shall be done under the direction and to the satisfaction of the City Engineer instead of Street Superintendent, in which case the contract shall so state;

Notice of non-liability for payment by City or its officers;

Eight-hour labor clause in accordance with Sec. 653c of Penal Code;

Contract must be entered within prescribed time;

Extensions of time must be entered on Contract.

Sec. 12 provides a method by which the property owners may do the work should they so elect, and allows ten days from the first publication of the notice of award for this purpose. The original awardee cannot, therefore, enter a contract before this period elapses, and must enter the contract within fifteen days from the first publication, so that he actually has only a period of five days within which to enter his contract. It is a wise procedure to immediately prepare the contract and bonds after the award so that the contractor may have time to properly execute them during the period allowed him. Several instances have occurred where this was not done with great embarrassment for all concerned. In the case of large contracts in the smaller interior cities, the contractor must obtain a surety bond and this can only be executed by the proper officer at the Coast agency, often many miles away.

12. Affidavits.

In every instance of posting or publishing, affidavits must be filed with the Clerk, concisely setting forth the dates and periods over which such posting or publishing extend.

We have endeavored to outline the various steps leading up to contracts, and emphasized some of the things which, through past experience, we have found to be sources of trouble and annoyance, with the hope that street proceedings more comprehensive in character and free from errors and omissions would result. Ofttimes work of this nature is incumbent upon the City Attorney, the Engineer and Street Superintendent, whose knowledge of this intricate subject is limited, and it is for the guidance of these officials most concerned that this introduction is intended, that they may avoid some of the errors of omission and commission with which so many of our Street Work Proceedings have been filled.

W. R. CHILDS.

IMPROVEMENT ACT OF 1911

AN ACT TO PROVIDE FOR WORK IN AND UPON STREETS, AVENUES, LANES, ALLEYS, COURTS, PLACES AND SIDEWALKS WITHIN MUNICIPALITIES, AND UPON PROPERTY AND RIGHTS OF WAY OWNED BY MUNICIPALITIES, AND FOR ESTABLISHING AND CHANGING THE GRADES OF ANY SUCH STREETS, AVENUES, LANES, ALLEYS, COURTS, PLACES AND SIDEWALKS, AND PROVIDING FOR THE ISSUANCE AND PAYMENT OF STREET IMPROVEMENT BONDS TO REPRESENT CERTAIN ASSESSMENTS FOR THE COST THEREOF AND PROVIDING A METHOD FOR THE PAYMENT OF SUCH BONDS. (Approved April 7, 1911, Stats. 1911, p. 730. Amended 1913, pp. 57, 78, 356, 540, Stats. 1913. Amended 1915, p. 1464, Stats. 1915).

PART I.

Public streets defined.

1. All streets, lanes, alleys, places or courts, in the municipalities of this state now open or dedicated, or which may hereafter be opened or dedicated to public use, shall be deemed and held to be open public streets, lanes, alleys, places or courts, for the purpose of this act, and the city council of each municipality is hereby empowered to establish and change the grades of said streets, lanes, alleys, places, or courts, and fix the width thereof, and is hereby invested with jurisdiction to order to be done thereon any of the work mentioned in this act under the proceedings hereinafter described.

Accepting dedication.

The filing and recording of a map showing streets is merely an offer of dedication; there must be a showing that the public authorities accepted the streets either by user or some formal acceptance within a reasonable time. *Wolfskill v. County of Los Angeles*, 86 Cal. 405. (See Section 79 hereof, seventh paragraph.)

Dedication.

There must be a dedication before proceedings are commenced. Jurisdiction cannot be established by a subsequent dedication. *Spaulding v. Wesson*, 115 Cal. 441.

For definition of street, see Section 79, subdivision 7.

What work may be done.

2. Whenever the public interest or convenience may require, the city council is hereby authorized and empowered to order the whole or any portion or portions, either in length or width of any one or more of the streets, avenues, lanes, alleys, courts, places or public ways of any such city graded or regraded to the official grade, planked or replanked, paved or repaved, macadamized or remacadamized, graveled or regreveled, piled or repiled, capped or recapped, oiled or reoiled, and

to order the construction or reconstruction therein of sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings and parkways, sewers, ditches, drains, conduits and channels for sanitary drainage purposes or either or both thereof, with outlets, cesspools, manholes, catch basins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels and other appurtenances; pipes, hydrants and appliances for fire protection; tunnels, viaducts, conduits and subways, breakwaters, levees, bulkheads and walls of rock or other material to protect the same from overflow or injury by water; and poles, posts, wires, pipes, conduits, lamps and other suitable or necessary appliances for the purpose of lighting said streets, avenues, lanes, alleys, courts, places or public ways; the planting of trees thereon, and the construction or reconstruction in, over or through property or rights of way owned by such city, of tunnels, sewers, ditches, drains, conduits, and channels for sanitary and drainage purposes or either or both thereof, with necessary outlets, cesspools, manholes, catch basins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels and other appurtenances, pipes, hydrants and appliances for fire protection and breakwaters, levees, bulkheads and walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways and other property in any such city, from overflow by water, and to order any work to be done which shall be deemed necessary to improve the whole or any portion of such streets, avenues, sidewalks, lanes, alleys, courts, places, or public ways or property or rights of way of such city.

Plans and specifications.

Although not expressly required by the language of the act, it is necessary to have plans and specifications adopted before passing the resolution of intention, except the proposed work is so simple as not to require them, in which case the description of the work in the resolution of intention should be most complete.

Right of way.

The right must be obtained before commencing proceedings. The cost of a right of way cannot be included as one of the incidental expenses of the work.

Official grade.

Be sure that the official grade has been properly established. Fixing the official grade at two points does not fix it "between such two points as being an arbitrary straight line between such points so established." *Dorland v. Bergson*, 78 Cal. 640. Grading to the official "sub-grade" is valid. *Palmer v. Burnham*, 120 Cal. 364.

In case the official grade has been changed, see that it was done in accordance with law. "Changing the grade after passage of the resolution of intention invalidates the contract and assessment." *Warren v. Chandos*, 115 Cal. 382.

Tunnels

Neither the Vrooman Act nor Section 2 of the Act of 1911 authorize the City Council to levy an assessment for the construction of a tunnel to be used as a part of a public street for travel; only tunnels for drainage and sanitary purposes are authorized. *Thompson v. Hance*, 174 Cal. 572,

More than one street.

Several streets may be improved in a single proceeding. *Remillard v. Blake & Bilger Co.*, 169 Cal. 277.

Initiative and Referendum.

Street work proceedings are not subject to the initiative and referendum. *Chase v. Kalber*, 1917, p. 655, 28 Cal. App. 561.

Resolution of intention.

3. Before ordering any work done or improvement made, which is authorized by this act, the city council shall pass a resolution of intention so to do referring to the street by its lawful or official name, or the name by which it is commonly known, and briefly describe the work. Said resolution shall contain also a notice of the day, hour and place when and where any and all persons having any objections to the proposed work or improvement may appear before the legislative body and show cause why said proposed improvement should not be carried out in accordance with said resolution; said time shall not be less than fifteen nor more than forty days from the date of the passage of said resolution. Said resolution of intention shall be published twice in one or more daily, semi-weekly, or weekly newspapers published and circulated in said city, and designated by said council for that purpose. The city council may include in one proceeding, under one resolution of intention and in one contract, any of the different kinds of work mentioned in this act and any number of streets and rights of way or portions thereof contiguous or otherwise, and it may except therefrom any of said work already done upon a street to the official grade. The lots and portions of lots fronting upon said excepted work already done shall not be included in the assessment for the class of work from which the exception is made; provided, that this shall not be construed so as to affect the special provisions as to grading contained in Subdivision 9 of Section 20 of this Act. (As amended and in effect August 10, 1915.)

Notes.**Notifying absentee owners.**

It is a nice thing to notify absentee property owners of the proposed improvement by mail where their addresses are known to the clerk.

Using the district plan.

It is advisable to use the district plan (See Sec. 4) in the case of curved streets, or in case there are any triangular lots to be assessed, or unless the property fronting on the proposed improvement is all of the same relative value per front foot. The district plan enables a more equitable assessment and less likelihood of errors.

Excepting work already done.

In case the work has already been done in some places along the proposed line of work, which is often the case where the improvement desired is side-walks or curbing, this clause should be inserted in the resolution of intention following the description of the work: "excepting therefrom any of said work already done to the official grade." (See Sec. 3.)

Railroad tracks.

In case the proposed work is street paving on a street containing railroad tracks the following clause should be inserted in the resolution of intention following the description of the work: "Excepting, however, from all of the aforescribed work, such portion as is required by law to be kept in order or repair by any person or company having railroad tracks thereon." (See Sec. 77.)

Description.

The description of the work to be done should be sufficiently comprehensive to inform the property owners of the nature of the improvement; do not be too brief in the description.

Newspaper.

Publication in a newspaper other than the one designated is in effect no publication at all. *Chase v. City Treasurer of Los Angeles*, 122 Cal. 540.

Council may order publication in other than the official newspaper. *Cal. Improvement Co. v. Moran*, 128 Cal. 373.

Daily Newspaper.

The publication must be in a daily newspaper in case there be one published in the municipality. (See Sec. 79, Sub. 4.)

Decisions**Names of Streets.**

The resolution of intention may refer to the streets by the names by which they are commonly known. *Federal Const. Co. v. Kncese*, 27 Cal. App., Dec. 31 (June 26, 1919).

Work done outside the limits.

An excess of work done outside the limits fixed in the resolution of intention will not invalidate an assessment against lots within those limits. *Frick v. Morford*, 87 Cal. 576.

Posting in Lieu of Publication.

Under section 79, notice of the passage of the resolution of intention may be given by posting where there is no newspaper *published and circulated* in the city where the work is to be done. The posting must be for at least eight days and the time for filing protests does not commence until the lapse of eight days. *Coleman v. Spring Const. Co.*, 28 Cal. App. Dec. 1132 (May 13, 1919).

Insufficient publication.

Failure to publish for the length of time required by the law renders proceedings invalid. *Brady v. Burke*, 90 Cal. 1.

Insufficient description.

The resolution of intention to macadamize does not authorize the construction of rock gutters also. *Patridge v. Lucas*, 99 Cal. 519.

Unlawful delegation to street superintendent.

A resolution of intention delegating to the street superintendent the right to determine whether planking and concrete should be required for the foundation of sewers is invalid and renders contract and assessment void. *Bolton v. Gilleran*, 105 Cal. 244.

Alternative materials.

A resolution of intention which describes the proposed work as "granite or artificial stone curbing" is insufficient to confer jurisdiction on the board to order the work done. *San Jose Imp. Co. v. Auzerais*, 106 Cal. 498.

Publication on Sunday.

Publication on Saturday and Sunday satisfies the requirement of two insertions. *Smith v. Hazard*, 110 Cal. 145.

Re-grading and re-macadamizing.

Where a street has been previously graded and macadamized, a subsequent resolution of intention describing the proposed work as grading and macadamizing instead of re-grading and re-macadamizing is sufficient. *Wells v. Wood*, 114 Cal. 255.

Designation of newspaper.

It is not necessary that the city council should designate the newspaper for publication in a separate order; it is sufficient if the designation is contained in the resolution itself. *King v. Lamb*, 117 Cal. 401.

Sub-grade.

The board has jurisdiction to order a street to be graded "to the official sub-grade" for the purpose of putting it in proper condition for macadamizing. *Palmer v. Burnham*, 120 Cal. 364.

Unauthorized publication.

Publication of the resolution of intention in a paper other than the one designated by the board is in effect no publication and cannot give jurisdiction to order the work done. *Chase v. City Treasurer*, 122 Cal. 540.

Materials not mentioned.

The resolution for the construction of culverts and curbing, where the materials out of which they are to be constructed are not mentioned is void.

A defective resolution cannot be cured by subsequent detailed specifications prepared by the engineer and set forth in the order for doing the work. *Schwiesau v. Mahon*, 128 Cal. 114.

Quantity and materials.

A resolution of intention which announces as part of the proposed work "suitable drains and inlets to be constructed at all intersecting crossings, etc.," without specifying the number of drains or inlets or their size or the materials of which they are to be constructed, is fatally defective. *Fay v. Reed*, 128 Cal. 357.

Certainty and consistency.

The description in the resolution must be certain, though not required to be as minute and precise as would be proper in the plans and specifications; if plans and specifications are required they must conform to and be consistent with said description. *Fay v. Reed*, 128 Cal. 357.

Official newspaper.

The board has authority to designate a paper other than the official newspaper. *Cal. Imp. Co. v. Moran*, 128 Cal. 373.

Private work stopped.

After passage of resolution of intention the board cannot grant special permits to individual lot owners to do their portions of the work proposed. *Kutchin v. Engelbret*, 129 Cal. 635.

Description of the work—specifications.

The resolution of intention should describe in general terms, the number, size, location and material of the various classes of the proposed improvements, and refer to the specifications for particulars as to each class. An omission of any one vitiates the resolution as a whole and makes void the contract and assessment based thereon. *Bay Rock Co. v. Bell*, 133 Cal. 150.

Dimensions and materials.

A resolution of intention to improve certain streets by construction sewers thereon, with cribbing, manholes and flush-tanks, which wholly fails to describe the dimensions of the flush-tanks, or the materials from which it is to be constructed, and which is not aided in description by any specifications therefor, vitiates the resolution as a whole, and renders the contract void. *McDonnell v. Gillon*, 134 Cal. 329.

Quantity and materials.

A resolution of intention that a certain street be sewerred and have branch sewers running to the curb, without stating the material out of which the sewers should be constructed, or the number of branch sewers to be laid, is void and the assessment invalid. *Williamson v. Joyce*, 137 Cal. 107.

One or more improvements on one or more streets.

The board may include one or more improvements on one or more streets in a single resolution of intention, whether connected or remote from each other, without requiring them all to be included in the same resolution ordering the work, or to be contracted for by the same individual. *Bates v. Twist*, 138 Cal. 52.

Roadway includes gutter.

A resolution of intention to pave a street includes the gutterways unless a different kind of work is indicated for the gutterways. *City Street Imp. Co. v. Taylor*, 138 Cal. 364.

Resolution in minutes.

It is not necessary to copy a resolution of intention, in full, in the minutes of the city council, provided the resolution is sufficiently identified by reference. *Dowling v. Hibernia Savings & L. Society*, 143 Cal. 425.

Unlawful delegation.

The resolution of intention for macadamizing calling for "such rock as shall be approved by the board of trustees" is insufficient to give the board jurisdiction to let the contract. *Lambert v. Cummings*, 2 Cal. App. 642.

A single improvement.

Resolution of intention describing different kinds of work on the same street is a single improvement. *Pepper v. Neiman*, 4 Cal. App. 55.

Failure to specify materials.

A resolution of intention where the work proposed to be done is described as merely "to sidewalk and curb" without specifications of the character of the materials to be used, is void. *Crouse v. Barrows*, 156 Cal. 154.

"Briefly."

The work may be described in "full" instead of briefly. *McCaleb v. Dreyfus*, 156 Cal. 204.

Lawful delegation.

The fact that the location of a concrete catch basin to be constructed was to be determined by the city surveyor is not material. *Burns v. Casey*, 13 Cal. App. 154.

Printed, published and circulated.

A newspaper may be published in one town even if printed in another. Little or no regard is paid to the mere place of printing, even when the word "printing" coupled with publication is embraced in the statutory requirement. *Stanwood v. Carson*, 49 Cal. Dec. 422.

When chargeable on a district.

4. Whenever the contemplated work or improvement, in the opinion of the city council, is of more than local or ordinary public benefit, or whenever, according to estimate to be furnished by the city engineer, the total estimated costs and expenses thereof would exceed one-half the total assessed value of the lots and lands assessed, if assessed upon the lots or land fronting upon said proposed work or improvement, according to the valuation fixed by the last assessment-roll whereon it was assessed for taxes for municipal purposes, and allowing a reasonable depth from such frontage for lots or lands assessed in bulk, the city council may make the expense of such work or improvement chargeable upon a district, which the said city council shall, in its resolution of intention, declare to be the district benefited by said work or improvement, and to be assessed to pay the costs and expenses thereof.

Size of district.

The size of the district is immaterial. It is not necessary that it be larger than the area of the lots fronting on the streets improved. *O'Dea v. Mitchell*, 144 Cal. 374.

Declaration of benefit essential.

The resolution of intention for a district assessment must contain an express declaration that the district to be assessed is the one to be benefited by the work. The failure to do so renders the proceeding void and it is not cured by the issuance of bonds. *Watkinson v. Vaughn*, 28 Cal. App. Dec. 657, (March 21, 1919). (Pending before Supreme Court.)

Resolution held to contain a sufficient declaration of benefit.

Beale v. Santa Barbara, 32 Cal. App. 235.

Notice of improvement.

5. After the adoption of the resolution of intention, the street superintendent shall cause to be conspicuously posted along the line of said contemplated work or improvement, at not more than three hundred

feet in distance apart, but not less than three in all, or when the work to be done is only upon an entire crossing or intersection or any part thereof, in front of each quarter block or irregular block liable to be assessed, notices of the passage of said resolution. In case the work is chargeable upon a district as herein provided, copies of said notice shall also be posted along all the open streets within such district at not more than three hundred feet in distance apart, but not less than three in all on each street. In every case all the posting must be fully completed at least ten days before the day set for hearing protests or objections as provided in Section 3 hereof.

Said notices shall be headed "Notice of Improvement" in letters of not less than one inch in length; and shall, in legible characters, state the fact of the passage of the resolution of intention, its date, and briefly, the work or improvement proposed, and refer to the resolution of intention for further particulars. Said notices shall contain also a statement of the day, hour and place when and where any and all persons having any objections to the proposed work or improvement may appear before the legislative body and show cause why said proposed improvement should not be carried out in accordance with said resolution. (As amended and in effect August 10, 1915.)

Note.

Posting.

The notices should be tacked or pasted on trees, fences or buildings, so that they are likely to be observed. Be sure that each letter in the heading is at least one inch high. At least three notices must be posted even though the proposed improvement is in front of one lot only.

Decisions

Quarter blocks.

Where proposed work is to be done on the frontage plan on a street more than a block long involving street crossings, it is not necessary that the notices be posted in front of each quarter block liable to be assessed. *Miller v. Mayo*, 88 Cal. 568.

Reference for further particulars.

If the published notice of street work contains the resolution of intention in full, it is not necessary to refer to the resolution of intention for further particulars. *Schmidt v. Market St. & Willow Glen R. R. Co.*, 90 Cal. 37.

Delay in posting notices.

Where the resolution of intention was passed in January, and superintendent's notices were not posted until the 26th of March there was no unreasonable delay, provided the weather was inclement. *Porhyry Paving Co. v. Ancker*, 104 Cal. 340.

Notice must state date of passage of resolution.

Under section three of the Street Opening Act of 1903, which requires the notice to state, "the fact and date," of the passage of the ordinance of intention, a notice which fails to correctly state the date of final passage of the ordinance of intention is fatally defective and is not cured by the notice giving the number of the ordinance, or by a provision that the act is to be liberally construed. *Ferri v. City of Long Beach*, 176 Cal. 615.

Insufficient posting.

Where the resolution of intention describes the sewer to be constructed along specified portions of several different streets the notices to be posted must describe the work as an entirety; and a notice posted along one of such streets, which merely describes the work to be done thereon is insufficient. *White v. Harris*, 116 Cal. 470.

Distance apart.

The distance between notices ought to be measured longitudinally along the line of the improvement, where they are alternating on each side of the roadway, and not measured diagonally. *Pepper v. Neiman*, 4 Cal App. 55.

Notices more than 300 feet apart.

After bonds are issued, the assessment is valid although one of the notices was posted 309 feet 4 inches from the next one. This was held a substantial compliance. *Gordon v. Ransome Crummeys Co.*, 27 Cal. App. Dec. 129, (July 10, 1918).

Size of type used.

The size of type used in the body of the posted notices cannot be complained of if sufficiently legible. *McCaleb v. Dreyfus*, 156 Cal. 204.

Where the word "Improvement" was in letters five-eighths of an inch in height, instead of one inch, it has been held there was a substantial compliance with the statute. *Coleman v. Spring Const. Co.*, 28 Cal. App. Dec. 1132 (May 13, 1919). Rehearing denied, 58 Cal. Dec. 66.

But it is safer to strictly follow the statute in this respect.

Protest and hearing.

6. At any time not later than the hour set for hearing objections to the proposed work as provided in Section 3 hereof, any owner of property liable to be assessed for said work may make written protest against the proposed work or against the extent of the district to be assessed, or both. Such protest must be in writing and be delivered to the said clerk of the city council, and no other protests or objections shall be considered. At the time set for hearing protests the city council shall proceed to hear and pass upon all protests so made and its decision shall be final and conclusive; provided, however, that when the protest is against the proposed work, and the cost thereof is to be assessed upon the property fronting thereon, and the city council finds that such protest is made by the owners of a majority of the property fronting on the proposed work, or when the protest is against the proposed work and the cost thereof is to be assessed upon the property within a district, and the city council finds that such protest is made by the owners of more than one-half of the area of the property to be assessed for said improvements, no further proceedings shall be taken for a period of six months from the date of the decision of the city council on said hearing, unless the said protests be overruled by an affirmative vote of four-fifths of the members of the city council. The words "proposed work" as used herein, shall mean and include all the work described in the resolution of intention. The city council may adjourn said hearings from time to time. (As amended and in effect August 10, 1915.)

Decisions**Several classes of work.**

Where a resolution of intention specifies different classes of work and one or more is protested against, council may order the work to be done for the other classes of improvement. *Los Angeles Lighting Co. v. City of Los Angeles*, 106 Cal. 156.

Protest by co-tenant.

One of the several co-tenants of a lot of land fronting on a proposed improvement has the right to sign a protest for said lot, provided the other co-tenants do not object or did not sign a petition for the improvement. *Los Angeles Lighting Co. v. City of Los Angeles*, 106 Cal. 156.

Protest by agent.

The agent of a lot owner may sign a protest, though the council may require proof of his authority if challenged. *Los Angeles Lighting Co. v. City of Los Angeles*, 106 Cal. 156.

Protest by corporation.

The protest of a corporation may be signed by its general manager; executors are expressly authorized by statute to sign a protest for the owner. *Los Angeles Lighting Co. v. City of Los Angeles*, 106 Cal. 156.

Part of the work.

A protest against part of the work must be received and heard. *Los Angeles Lighting Co. v. City of Los Angeles*, 106 Cal. 156.

Arbitrary power of council.

The right of protest is not affected by reason of the fact that the board has arbitrary power and the protest might be allowed. *Thomason v. Carroll*, 132 Cal. 148.

Effect of protest allowed.

A protest allowed not only stops the work for six months but requires a new resolution of intention in order to again acquire jurisdiction. *Thomason v. Carroll*, 132 Cal. 148.

Endorsing protest.

Failure of the clerk to endorse protest cannot defeat it. *Thomason v. Carroll*, 132 Cal. 148.

A protest is sufficient though not formally indorsed by the clerk, if otherwise sufficiently identified and authenticated. *Pacific Pav. Co. v. Gallett*, 137 Cal. 174.

Effect of objections allowed.

An objection to the proposed work which is allowed by the board, not only suspends further proceedings for six months, but deprives board of jurisdiction. A new resolution of intention is necessary to do the work. *Pacific Paving Co. v. Sullivan Est.*, 137 Cal. 261.

All protests must be acted on.

All protests filed must be acted upon and disposed of in a formal manner before the board acquires jurisdiction to order the work. *Gray v. Burr*, 138 Cal. 109.

Continuing hearing of protests.

On the date fixed for hearing protests the council may continue the hearing; but query, whether they are authorized to continue the hearing in advance of date fixed. However, if order of continuance is made in advance of date fixed a property owner who is not a protestant cannot complain. *Farley v. Reindollar*, 174 Cal. 703.

New resolution of intention required.

Where the work has been stopped by a majority protest, proceedings must be started anew again in order to acquire jurisdiction. *City Street Imp. Co. v. Babcock*, 139 Cal. 690.

Objections liberally construed.

Procedure required of property owners in making their objections should be liberally construed. *City Street Imp. Co. v. Babcock*, 139 Cal. 690.

One improvement.

Majority protest requires majority of the frontage of all the streets proposed to be improved in one proceeding as one improvement. *Remillard v. Blake & Belger Co.*, 169 Cal. 277.

Jurisdiction, when acquired.

7. If no protests or objections in writing have been delivered to the clerk up to the hour set for hearing provided in Section 3 hereof, or when a protest shall have been found by said city council to be insufficient, or shall have been overruled, or, when a protest against the extent of the proposed district shall have been heard and denied, immediately

thereupon the city council shall be deemed to have acquired jurisdiction to order the proposed improvements. (As amended and in effect August 10, 1915.)

Decisions

Time for ordering work.

A lapse of six months' time between the passage of the resolution of intention and the resolution ordering the work, is simply a postponement and does not deprive the council of its right to order the work. *City Street Imp. Co. v. Laird*, 138 Cal. 27.

Ordinance instead of resolution.

Council may pass an ordinance instead of a resolution. *Mulberry v. O'Dea*, 4 Cal. App. 385.

Premature resolution.

Resolution or ordinance ordering the work to be done, passed before the completion of the publication of the resolution of intention, is of no effect, and any claim of lien thereon is void. *Mulberry v. O'Dea*, 4 Cal. App. 385.

Plans and specifications.

8. Before passing any resolution for the construction of improvements, plans and specifications and careful estimates of the costs and expenses thereof shall be furnished to said city council, if required by it, by the city engineer of said city; and for the work of constructing sewers, specifications shall always be furnished by him.

Notes.

Certainty.

The fact that the location of a catch-basin was to be determined by the city surveyor is immaterial and will not invalidate the proceedings. *Burns v. Casey*, 13 Cal. App. 154.

Notwithstanding the foregoing decision it is not safe practice to allow this, for the reason that the location of the catch-basin might affect the amount of each assessment; if located on a crossing it would do this.

Specifications should be definite.

Great care should be taken to make the specifications definite and certain so as to avoid vesting any discretion in the street superintendent or engineer which might affect the cost of the work.

Decisions.

Certainty.

Specifications that the contractor "shall put in such culverts as the street superintendent shall direct" and failure to specify the places and materials, is not sufficient, and also shows an improper delegation of power to the street superintendent, which vitiates the assessment. *Grant v. Barber*, 135 Cal. 188.

Discretion in street superintendent.

It has been held that specifications which confer upon the street superintendent authority to change the proportions of sand and rock in the concrete aggregate, which changes do not require an increased amount of cement, do not vest an illegal discretion in that official. Vesting the street superintendent with authority to determine the number of revolutions of the drum for mixing each batch of concrete does not confer an illegal discretion on him. *Thoits v. Byrbee*, 34 Cal. App. 226.

Under the Road District Act of 1907 specifications which require a contractor, without extra compensation, to grade a safe, proper and workmanlike connection with intersecting streets according to the engineer's directions are not void as conferring an illegal discretion; but the safer practice is for specifications to definitely and with certainty describe the manner and extent of the work to be done. *Dillingham v. Welch*, 57 Cal. Dec. 140 (Jan. 31, 1919).

Specifications in resolution of intention.

It is not necessary that the specifications be incorporated into the resolution of intention, or that they be published. *Chase v. Trout*, 146 Cal. 350.

Adoption by resolution.

Specifications may be adopted by resolution. *Haughwout v. Raymond*, 148 Cal. 311.

Variance between specifications and plans.

The fact that the specifications called for a lamp hole to be placed at the point indicated on the plans and profile, when the plans, profile and resolution called for six lamp holes, and such number were in fact constructed, is not sufficient variance to deprive council of jurisdiction to order the work. *McCaleb v. Dreyfus*, 156 Cal. 204.

Description by reference.

9. In all resolutions, notices, orders and determinations, subsequent to resolution of intention and notice of improvement, it shall be sufficient to briefly describe the work or the assessment district or both and to refer to the resolution of intention for further particulars.

Inviting sealed proposals.

10. Before the awarding of any contract by the city council for doing any work authorized by this act, the city council shall pass a resolution ordering the work. Notice, with specifications, shall be posted conspicuously for five days on or near the council chamber door of said council, inviting sealed proposals or bids for doing the work ordered. Notice inviting such proposals, and referring to the specifications posted or on file, shall be published twice in a daily, semi-weekly, or weekly newspaper published and circulated in said city, designated by the council for that purpose, and in case there is no newspaper published in said city, then it shall only be posted as hereinbefore provided. The time fixed for the opening of bids shall be not less than ten days from the time of the first publication or posting of said notice. All proposals or bids offered shall be accompanied by a check payable to the city certified by a responsible bank, for an amount which shall not be less than ten per cent of the aggregate of the proposal, or by a bond for the said amount and so payable, signed by the bidder and two sureties, who shall justify, before any officer competent to administer an oath, in double the said amount, and over and above all statutory exemptions. Said proposals or bids shall be delivered to the clerk of the said city council, and said council shall, in open session publicly open, examine and declare the same; provided, however, that no proposal or bid shall be considered unless accompanied by said check or bond satisfactory to the council. The city council may reject any and all proposals or bids should it deem this for the public good, and also the bid of any party who has been delinquent or unfaithful in any former contract with the municipality, and shall reject all proposals or bids other than the lowest regular proposal or bid of any responsible bidder, and may award the contract for said work or improvement to the lowest responsible bidder at the prices named in his bid. If the bids are rejected or no bids are received the city council may within six months thereafter re-advertise for proposals or bids for the performance of the work as in the first instance, without further proceedings,

and thereafter proceed in the manner in this section provided, and shall thereupon return to the proper parties the respective checks and bonds corresponding to the bid so rejected. But the checks accompanying such accepted proposals or bids shall be held by the city clerk of said city until the contract for doing said work, as hereinafter provided, has been entered into, either by said lowest bidder or by the owners of three-fourths part of the frontage, whereupon said certified check shall be returned to said bidder. But if said bidder fails, neglects or refuses to enter into the contract to perform said work or improvement, as hereinafter provided, then the certified check accompanying his bid and the amount therein mentioned, shall be declared to be forfeited to said city and shall be collected by it and paid into the general fund, and any bond forfeited may be prosecuted, and the amount due thereon collected and paid into said fund.

Notes.

Separate contracts forbidden.

Separate contracts cannot be made for a single improvement. *Treanor v. Houghton*, 103 Cal. 53.

Each kind of work.

Be sure and call for separate bids on each kind of work, else it might be impossible to make a proper assessment thereafter, as certain kinds of work must be assessed on quarter blocks.

Record in minutes.

Minutes must show that the bids were publicly opened, examined and declared. *Edwards v. Berlin*, 123 Cal. 544.

Decisions.

Responsible bidder.

City council has authority to reject lowest bid from one found to have been delinquent and unfaithful, and its determination as to facts is as conclusive as the verdict of a jury. *Girvin v. Simon*, 116 Cal. 604.

Lowest responsible bidder.

Under Section 5 of the Vrooman Act, (which is identical with Section 10 of the Act of 1911), the city council may properly refuse the bid of the lowest bidder if he has failed to perform a contract for the improvement of the State highway. A finding of the council that such person was not the lowest responsible bidder, in the absence of fraud or collusion, is conclusive. *Thoits v. Byrbee*, 34 Cal. App. 226, 235.

Ambiguity in Notice.

If an ambiguity in the notice inviting bids disappears by reference to the specifications, the notice is good if the specifications are made a part of it by reference and they are open to the inspection of bidders. (Construing Road District Act of 1907.) *Dillingham v. Welch*, 57 Cal. Dec. 140, (Jan. 31, 1919).

Contents of Notice.

The notice given by the clerk inviting sealed proposals does not affect the validity of the proceedings because of a failure to state that the bid must be accompanied by a certified check or a bond, as the statute does not require any recital as to either in the clerk's notice. *Federal Const. Co. v. Wold*, 30 Cal. App. 360.

However, it is good practice for the notice to state these facts.

Public declaration of bid.

The minutes of the board must show that the bids received were publicly opened and declared, and in the absence that this was done the assessment will be rendered void. *Edwards v. Berlin*, 123 Cal. 544.

Shortage of bond.

A slight shortage in the amount of the bond does not vitiate the subsequent proceedings. The bond has served its purpose when the contract has been awarded and the property owner cannot object to the preliminary bond if the work has been properly performed. *Greenwood v. Morrison*, 128 Cal. 350.

Blank bid.

A blank bid omitting the name of the bidder is void and is not rendered valid by a bond attached thereto signed by the contractors and their sureties. *Williams v. Bergin*, 129 Cal. 461.

Time for receiving bids.

Clerk may fix time if not done by the board, if such time is in accord with the requirement of the law. *Belser v. Allman*, 134 Cal. 399.

Separate contracts allowed.

A number of contracts to different parties may be let for the different kinds of improvements described in one resolution of intention. *Bates v. Twist*, 138 Cal. 52.

Time for receiving bids.

The clerk may fix the time for receiving bids without express directions from the council as to the exact time. *Beckett v. Morse*, 4 Cal. App. 228.

Lowest bidder.

Where the resolution of intention describes several kinds of work such as paving, guttering, curbing and culverts, the work to be done is considered as a unit, and the lowest bidder for the entire work is entitled to the contract, notwithstanding there were lower bidders for each particular class of work. *Stimson v. Hanley, et al.*, 151 Cal. 379.

Notice of awarding contract.

11. Notice of such award of contract shall be posted for five days, in the same manner as hereinbefore provided for the posting of proposals for said work, and shall be published twice in a daily, semi-weekly, or weekly newspaper published and circulated in said city and designated by said city council; provided, however, that in case there is no newspaper published and circulated in such city, then such notice of award shall only be kept posted as hereinbefore provided. (As amended and in effect August 10, 1915.)

Decisions.**Premature contract.**

Contract is void if entered into within ten days after first publication of notice of award. *Manning v. Den*, 90 Cal. 610.

Time for letting contract.

The ten days allowed the owners to take the work after the first publication of the resolution of award, does not require the lapse of one day before the ten days begin to run, and a contract let on the 19th where the first publication was on the 8th, was not prematurely let. *Banaz v. Smith*, 133 Cal. 102; *Thoits v. Byrbee*, 34 Cal. App. 226, 236.

Owners may take contract.

12. The owners of three-fourths of the frontage of lots and lands liable to be assessed, or their agents, and who shall make oath that they are such owners or agents, shall not be required to present sealed proposals or bids, but may within ten days after the first publication, or first posting in case there is no publication, of said notice of said award, elect to take said work and enter into a written contract to do the whole work at the price at which the same has been awarded, and all work done under such contract shall be subject to such regulations as may be prescribed by ordinance of the city council. Should the said owners fail to elect to take said work, and to enter into a written contract therefor within ten days, or to commence the work within fifteen

days after the date of such written contract, and to prosecute the same with diligence to completion, it shall be the duty of the superintendent of streets to enter into a contract with the original bidder to whom the contract was awarded, and at the prices specified in his bid. (As amended and in effect August 10, 1915.)

Private contract to some owners.

Where three-fourths of the property owners, instead of electing to do the work at the price awarded, made a private contract with the contractor at a reduced rate, there was no fraud as to warrant the court to declare the bonds void. *German Savings & Loan Society v. Ramish*, 138 Cal. 120.

Mandamus to compel entering into contract.

In a proper case, the property owners may, without previous demand, compel the street superintendent to enter into a contract with the person awarded it, by mandamus. (Under Vrooman Act.) *Thoits v. Byrbee*, 34 Cal. App. 226, 236.

Owners should demand contract from superintendent of streets.

If the property owners elect to do the work, they should make demand on the street superintendent, not the city council, to enter into the contract. *Wentland v. Clark and Henry Const. Co.*, 26 Cal. App. Dec. 830, (April 22, 1918).

Re-advertising for bids.

13. But if such original bidder neglects, fails or refuses, for fifteen days after the first publication of the notice of award, to enter into the contract, then the city council, without further proceedings, shall again advertise for proposals or bids, as in the first instance, and award the contract for said work to the then lowest regular bidder. Should no bids be received in response to this second call for proposals, the council may again advertise for bids under the same proceedings, at any time, within six months from the time set for the last reception of bids, and let the contract to the then lowest bidder, and such delay shall in no way affect the validity of any of the proceedings or assessments levied thereunder. The bids of all persons and the election of all owners, as aforesaid, who have failed to enter into the contract, as herein provided, shall be rejected in any bidding or election subsequent to the first for the same work.

Delay in making contract.

Contract not entered into within fifteen days is fatally defective unless containing an averment that the delay was not caused by the neglect or refusal of the contractor. *Libbey v. Elsworth*, 97 Cal. 316; *Perine v. Forbush*, 97 Cal. 305.

Delinquent contractors.

14. If the owner or contractor, who may have taken any contract, does not complete the same within the time limited in the contract, or within such further time as the city council may give him, the superintendent of streets shall report such delinquency to the city council which may relet the unfinished portion of said work after pursuing the formalities prescribed hereinbefore for the letting of the whole in the first instance.

Bond for faithful performance.

15. All contractors, contracting owners included, shall, at the time of executing any contract for street work, execute a bond to the satisfaction and approval of the superintendent of streets of said city, with two or more sureties and payable to such city, in a sum not less than twenty-five per cent of the amount of the contract, conditioned for the faithful performance of the contract; and the sureties shall justify before any person competent to administer an oath, in double the amount mentioned in said bond, over and above all statutory exemptions.

Protesting erroneous proceedings.

16. At any time within ten days from the date of the first publication of the notice of award of contract, any owner of, or other person having any interest in any lot or land liable to assessment, who claims that any of the previous acts or proceedings, relating to said improvement are irregular, defective, erroneous or faulty, may file with the clerk of the city council a written notice specifying in what respect said acts and proceedings are irregular, defective, erroneous or faulty. Said notice shall state that it is made in pursuance of this section. All objections to any act or proceeding occurring prior to the date of the first publication of the aforesaid notice of award, in relation to said improvement, not made in writing and in the manner and at the time aforesaid, shall be waived, provided, the resolution of intention to do the work has been actually published and the notices of improvement posted as provided in this act.

Advancing incidental expenses.

17. Before being entitled to a contract, the bidder to whom the award was made, or the owners who have elected to take the contract, must advance to the superintendent of streets, for payment by him, the cost of publication of the notices, resolutions, orders and matters required under the proceedings prescribed in this act, and of such other notices as may be deemed requisite by the city council, together with all other incidental expenses. And in case the work is abandoned by the city before the letting of the contract the incidental expenses incurred previous to such abandonment shall be paid out of the city treasury.

Notes.**What they are.**

(See Section 79, third paragraph.)

Engineering expenses are properly included. *McDonald v. Conniff*, 99 Cal. 386.

Incidental expenses.

Incidental expenses can only cover the actual expenses involved under the present resolution of intention. Any expenses incurred under a former abandoned resolution, or incurred by a former city engineer, cannot be included. *Fitzhugh v. Ashworth*, 119 Cal. 393.

Conditions in contract.

18. The superintendent of streets is hereby authorized in his official capacity, to make all written contracts, and to receive all bonds authorized by this act, and to do any other act, either express or implied, that pertains to the street department under this act; and he shall fix the time for the commencement, which shall not be more than fifteen days from the date of the contract, and for the completion of the work under all contracts entered into by him, which work shall be prosecuted with diligence from day to day thereafter to completion, and he may extend the time so fixed from time to time, under the direction of the city council. The work must, in all cases, be done under the direction and to the satisfaction of the superintendent of streets and the materials used shall comply with the specifications and be to the satisfaction of said superintendent of streets and all contracts made therefor must contain a provision to that effect; provided, however, that if the city council by resolution adopted within ten days after the passage of the resolution ordering the work so directs the work shall be done under the direction of the city engineer and the materials used shall comply with the specifications and be to the satisfaction of said engineer, instead of said superintendent of streets, and in such case the contract shall contain a provision to that effect. Said contract shall contain also express notice that, in no case, except where it is otherwise provided by law or the city charter will the city, or any officer thereof, be liable for any portion of the expense, nor for any delinquency of persons or property assessed. The city council may, by ordinance, prescribe general rules directing the superintendent of streets (or the city engineer, in the cases herein provided) and the contractor as to the materials to be used, and the mode of executing the work, under all contracts thereafter made. The assessment and apportionment of the expenses of all such work or improvement shall be made by the superintendent of streets in the mode provided by this act. (As amended and in effect August 10, 1915.)

Notes.

More proceedings have been turned down because of unlawful conditions in the contract than for any other cause.

Accident insurance.

The right to impose a condition requiring the contractor to take out accident insurance is regarded as questionable.

Decisions.

Extension of time.

The extension of time on a contract must be given before the expiration of the time allowed in the contract itself. *Brady v. Burke*, 90 Cal. 1; *Dougherty v. Nevada Bank*, 81 Cal. 162.

Recording extension.

Failure to record extension does not render it ineffectual. *Ede v. Knight*, 93 Cal. 159.

Variance with resolution of intention.

Where contract for a sewer was let as specified in the call for bids, but the distance was less by a block than the resolution of intention called for,

the contract is void, and an assessment creates no lien, and cannot be remedied by an appeal. *McBean v. Redick*, 96 Cal. 191; *Ede v. Knight*, 93 Cal. 159.

Error in extension to contractor.

An error in naming the contractor is of no consequence. *Anderson v. De Urioste*, 96 Cal. 404.

Assignment of contract.

Contract may be assigned with or without the consent of the officers of the municipality. *Anderson v. De Urioste*, 96 Cal. 404.

Extending contractor's time.

The action of the city council setting aside an assessment and warrant and directing further work as the result of an appeal by lot owners, does not operate as an extension of time to the contractor within which to complete the work. *Heft v. Payne*, 97 Cal. 108.

Eight-hour law.

Working laborers ten hours a day when the contract calls for an eight-hour day is immaterial and without any effect on the validity of the assessment. *Williams v. Savings & Loan Society*, 97 Cal. 122.

Bond to keep streets in repair.

A bond to keep streets so improved in repair for a term of five years after completion of the contract makes the contract and assessment void. *Brown v. Jenks*, 98 Cal. 10.

Contract in gold coin.

City council cannot make the contract in gold coin and any legal tender will do; but a contract calling for gold coin is not invalidated thereby. *Perine Contracting & P. Co. v. Quackebush*, 104 Cal. 684.

Time for entering into contract—holiday.

Should the tenth day after the first publication of the resolution of award fall on a holiday, the contractor has the whole of the next day to sign up. *Diggins v. Hartshorne*, 108 Cal. 154.

Contract must be signed within time.

The contractor must sign the contract within the time allowed by law, or the contract is not valid. A property owner does not waive this objection by his failure to appeal to the council as it is not a defect which the council has power to remedy. *Schmidt v. Santa Monica etc. Co.*, 27 Cal. App. Dec. 783, (Dec. 9, 1918). (Construing the Vrooman Act.)

Right of lien not assignable.

A perfected lien may be assigned, but a mere right to take a lien is not assignable. *Rauser v. Fay*, 110 Cal. 361.

Must describe work.

The contract must define the work to be done. *Schwicsau v. Mahon*, 110 Cal. 543; *Rauser v. Fay*, 110 Cal. 361.

Changing the grade after letting the contract.

City council has no power to lower the grade of a street after letting the contract under a resolution of intention to fill it to a higher grade; no valid assessment can be levied thereunder. *Warren v. Chandos*, 115 Cal. 382.

Improper delegation of power.

Specifications leaving it to the street superintendent or engineer to designate what extra concrete should be put in, to be paid for at a pro rata of the contract price, thus giving them the power to increase the cost of the work to an indefinite extent, and withholding from the property owners all means of determining the ultimate cost of the finished work, renders the proceedings invalid. *M. P. Perine C. P. Co. v. City of Pasadena*, 116 Cal. 6.

A contract delegating to the street superintendent the power to determine the amount of fine material to be used, so as to make it impossible for bidders to determine in advance the cost of profit of the work, renders the contract invalid. *Cal. Imp. Co. v. Reynolds*, 123 Cal. 88.

Time for commencing work.

It is not necessary that the street superintendent fix the exact day for commencing work; it may be fixed as within a specified number of days from the date of the contract. *Williams v. Bergin*, 127 Cal. 578.

Mistake as to date of completion.

A mistake in recording the contract as to the number of days fixed for the completion of the contract is immaterial, where the original contract fixes the correct number of days. *Wentland v. Clark and Henry Const. Co.*, 26 Cal. App. Dec. 830, (April 22, 1918).

Contract for less work.

A contract for less work than that proposed in the resolution of intention is void. *Kutchin v. Engelbret*, 129 Cal. 635.

Assignment before completion.

The contractor may assign contract before the completion of the work, in which case the warrant may run in favor of the assignee on the original contract also named. *Hadley v. Dague*, 130 Cal. 207.

Guaranteeing work.

An ordinance requiring that the contractor give a bond in a sum to be determined by the mayor guaranteeing the work for one year from injury, is unauthorized, improperly increases the burden on the property owner, and makes the contract and assessment void. *Alameda Macadamizing Co. v. Pringle*, 130 Cal. 226.

Private contract with certain owners.

A contractor is bound by any private contract with the property owner agreeing to a different price and providing for installment payments. *Flinn & Treacy v. Mowry*, 131 Cal. 481.

Improper delegation of power.

A contract for a sewer which provides that "when the ground does not afford a sufficiently solid foundation, the contractor shall excavate the trench to such an increased depth as the street superintendent may decide to be necessary, and shall then bring it up to the required level and form, with such material and in such manner as the street superintendent may direct" does not contain any improper delegation of power. *Haughawout v. Hubbard*, 131 Cal. 675.

Contract by a corporation.

Contract for a corporation, executed by its secretary, with seal attached, will bind the corporation where it appears to have been the custom of the corporation to have its secretary execute contracts; proof of the absence of a resolution authorizing the contract cannot defeat it. *Reid v. Clay*, 134 Cal. 207.

Unlawful liability.

A condition providing that "all loss or damage arising from the nature of the work to be done under these specifications shall be sustained by the contractor" looks to damage which might arise out of the completed work, and subsequent thereto, and is void. The law does not allow the municipality to escape its liability by shifting it to the contractor; besides it imposes conditions naturally tending to increase the cost of the work. *Blochman v. Spreckels*, 135 Cal. 662.

Expiration of time.

Where the time allowed for the completion of a contract has fully expired, and the work has not been performed, the contract ceases to have any vitality, and jurisdiction to levy an assessment thereon becomes extinct. *John Kelso v. Gillette*, 136 Cal. 603.

Option to contractor.

Provisions in a contract to allow the use of class A or class B rock for the gutters, where there is no difference in the cost of the material, is valid. *Lambert v. Marcuse*, 137 Cal. 44.

Seal on contract.

The corporate seal, though presumptive evidence that the contract was authorized, is not essential to the validity of the contract. *City Street Imp. Co. v. Laird*, 138 Cal. 27.

Injunction extending time.

An injunction by a private person to prevent performance of contract for a street improvement does not extend the time by operation of law, and where no extension was asked for or granted until after the expiration of the time limit for the performance, an assessment for work done after such expiration is void and cannot be enforced. *Union Contracting Co. v. Campbell*, 2 Cal. App. 534.

Minimum wages and hours of labor.

The inclusion in a contract of a provision fixing the hours of labor and the minimum wages of laborers employed by the contractor does not invalidate the assessment. *Flinn v. Peters*, 3 Cal. App. 235.

Unlawful liability.

Provisions in the specifications requiring the contractor to assume responsibility for all loss or damage arising from the nature of the work renders the contract invalid. *Mulberry v. O'Dea*, 4 Cal. App. 385.

A provision in the specifications that "all loss or damage arising from the nature of the work * * * shall be sustained by the contractor," renders the assessment and bonds void. *Woollacott v. Meekin*, 151 Cal. 701.

Eight-hour law.

Under a street assessment contract which stipulates that the entire cost is to be assessed upon the property contiguous to the line of work, and that in no case shall the city be liable for any portion of the work, the eight-hour law does not apply. *Genilla v. Hanley*, 6 Cal. App. 614.

Unlawful liability.

A provision in a city ordinance referred to and made a part of the specifications for proposed street work, that "all loss or damage arising from the nature of the work to be done under this agreement, etc.," "shall be sustained by the contractor," renders the assessment void. *Van Loenen v. Gillespie*, 152 Cal. 222.

Specifications containing a provision that "all loss or damages arising from the nature of the work to be done shall be borne by the contractor" are unauthorized as tending to increase the cost of the work, and renders void the bonds issued thereunder. *Joyce v. Newmark, et al.*, 7 Cal. App. 176; *Glassell v. O'Dea*, 7 Cal. App. 472.

A provision in a contract that "all loss or damage arising from the nature of the work to be done under this agreement, or from any unforeseen obstruction or difficulties which may be encountered in the prosecution of the same, or from the action of the elements, or from encumbrances on the lines of the work, or from any act or omissions on the part of the contractor or any person or agent employed by him not authorized by the contract," has the effect to render invalid the contract, assessment and lien. *Stansbury v. Poindexter*, 154 Cal. 709.

A provision in a contract for a street improvement requiring the work to be done under specifications which provided that "all loss or damage arising from the nature of the work to be done under the agreement * * * shall be sustained by the contractor," renders the contract, assessment and bond void. *True v. Fox, et al.*, 155 Cal. 534.

A condition "that all loss or damage arising from the nature of the work to be done under this agreement or from any unforeseen obstruction which may be encountered in the prosecution of the same shall be sustained by the contractor" imposed an unauthorized condition tending to increase the burden on the property owners and renders void the assessment and bonds issued thereon. *Charters v. Stansbury*, 10 Cal. App. 192.

Lawful delegation of power.

A provision that concrete may be required for the foundation for a proposed sewer, if deemed necessary by the city engineer, is not invalid if the specifications provide for payment of any such work as may be required, at a given price per cubic yard. *McCalrb v. Drayfus*, 156 Cal. 204.

Contractor may be given discretion to mix the concrete by hand or machine. *Burns v. Casey*, 13 Cal. App. 154.

Lawful liability.

A provision that the contractor will be responsible for all damages the city may have to pay in consequence of his failure to protect the public from injury imposes no additional burden on the contractor. *Schindler v. Young*, 13 Cal. App. 18.

Unlawful liability.

Authorizing the city engineer to make a final adjudication of any misunderstanding or dispute as to the interpretation of the contract is invalid and void, but it is harmless where there was no attempt at the exercise of such power and no occasion arose calling for its exercise. Giving of discretion to some person as to matters of detail is inevitable in every street improvement, if no power is improperly delegated. *Burns v. Casey*, 13 Cal. App. 154.

Lawful liability.

A provision that the contractor shall be liable for all loss or damage "arising from the nature of the work to be done under these specifications, during the progress of the work" is valid, providing that it is limited to the

damages "arising during the progress of the work." *Gay v. Engebretsen*, 158 Cal. 21.

A provision which makes the contractor responsible for the consequence of his own negligence or carelessness is not improper or fatal to the validity of the assessment. *McQuiddy v. Worswick Street Pav. Co.*, 160 Cal. 9.

Street superintendent "de facto."

A street superintendent "de facto" may transact the business of street superintendent in connection with street work proceedings. *Oakland Paving Co. v. Donovan*, 19 Cal. App. 488.

Lawful delegation of power.

A provision in the specifications for sidewalks that the finishing material shall contain sufficient lampblack or other coloring material to give the work a dark slate color, is not an unlawful delegation of power to the street superintendent. *Burnham v. Abrahamson*, 21 Cal. App. 248.

Time of completion of work.

The right to recover for work depends upon the completion within the time limited by the contract. *Barber Asphalt Paving Co. v. Bancroft*, 167 Cal. 187, and cases there cited.

Minimum wage and hours of labor.

Such provisions in a contract do not invalidate it. *Barber Asphalt Paving Co. v. Bancroft*, 167 Cal. 190, and cases there cited.

Bond for labor and material.

Sec. 19. Every contractor, person, company or corporation, including contracting owners, to whom is awarded any contract for street work under this act, shall, before executing the said contract, file with the superintendent of streets a good and sufficient bond, approved by the mayor, in a sum not less than one-half of the total amount payable by the terms of said contract; such bond shall be executed by the principal and at least two sureties, who shall qualify for double the sum specified in said bond, and shall be made to inure to the benefit of any and all persons, companies, or corporations who perform labor on, or furnish materials to be used in the said work of improvement, and shall provide that if the contractor, person, company, or corporation to whom said contract was awarded fails to pay for any materials so furnished for the said work of improvement, or for any work or labor done thereon of any kind, that the sureties will pay the same, to an amount not exceeding the sum specified in said bond. Any laborer, materialman, person, company or corporation, furnishing materials to be used in the performance of said work specified in said contract, or who performed work or labor upon the said improvement, whose claim has not been paid by the said contractor, company or corporation, who executed the said contract, shall severally have a first lien upon and against the assessment, any partial assessment, any reassessment, and any bonds which may be issued to represent any assessment or reassessment. Such laborers, or materialmen may, at any time prior to thirty days after the recording of the assessment for said work, file with the superintendent of streets, a verified statement of his or its claim, together with a statement that the same, or some part thereof, has not been paid. At any time within ninety days after the filing of such claim, the persons, company, or corporation, filing the same or their assigns, may commence an action either to enforce the aforesaid

lien, or on said bond, for the recovery of the amount due on said claim, together with the costs incurred in said action, and a reasonable attorneys fee to be fixed by the court; for the prosecution thereof.

Notice to sureties.

The filing of a verified claim of the street superintendent showing that contractors have failed to pay for materials is sufficient notice to sureties for their protection. *Oakland Paving Co. v. Donovan*, 19 Cal. App. 488.

Prior to the amendment of 1919 to Section 19 of the Act, laborers and materialmen had no right against the property owners or to the assessment, but were limited in their remedies to the contractor and surety. Hence, a surety who paid labor and material claims was not thereby subrogated to the contractor's rights to the assessment. *Adamson v. Paonessa*, 57 Cal. Dec. 332, (March 19, 1919).

Recovery may be had on bond, although contract is void.

A surety is liable to laborers and materialmen on a bond given according to the terms of this section, even though the original contract is void. So held where there was a failure to establish the official grade. *Hub Hdwe. Co. v. Aetna etc. Co.*, 55 Cal. Dec. 749, (May 10, 1918).

Under Section 6½ of the Vrooman Act (which corresponds to the above section) the surety is liable on the bond for labor and materials although the work is done for the contractor by his agent. Such a bond is not limited to those who supply labor and materials directly to the contractor. *Hub Hardware Co. v. Aetna etc. Co.*, *supra*. (Surety held liable for labor and materials furnished to assignee of contractor), *Los Angeles Stone Co. v. National Surety Company*, 55 Cal. Dec. 732, (May 8, 1918).

The same rule has been declared where labor and materials were furnished after the time limited by the contract for the performance thereof. *Hub Hardware Co. v. Aetna etc. Co.*, *supra*; *Los Angeles Stone Co. v. National Surety Company*, 55 Cal. Dec. 732, (May 8, 1918).

Time for filing claim.

Where the improvement is a single one, laborer's and materialmen's claims may be filed at any time within thirty days after completion of the entire work. They need not be filed within thirty days after completion of the part of the work upon which the labor and materials were furnished, even though an assessment has been, or may be, levied on the completed portion. *Hub Hdwe. Co. v. Aetna etc. Co.*, 55 Cal. Dec. 749, (May 10, 1918).

Frontage assessment.

20. Subdivision 1. The expenses incurred for any work authorized by this act (which expense shall not include the cost of any work done in such portion of any street as is required by law to be kept in order or repair by any person or company having railroad tracks thereon, nor include work which shall have been declared in the resolution of intention to be assessed on a district benefited) shall be assessed upon the lots and lands fronting thereon, except as otherwise in this act specifically provided; each lot or portion of a lot being separately assessed, in proportion to the frontage, at a rate per front foot sufficient to cover the total expense of the work. (Amended April 25, 1913.)

Basis of frontage assessment.

The basis of frontage assessment is the frontage of the lot upon the work irrespective of the shape, size, or depth of the lot. *Diggins v. Hartshorne*, 108 Cal. 154.

Assessment for grading.

The expense for grading must be assessed equally on both sides of the street, under a frontage assessment, regardless of whether more of the work of grading is done on one side than the other. The improvement is equally for the benefit of the lots abutting on both sides of the street. *San Diego Inv. Co. v. Shaw*, 129 Cal. 273.

Property at end of street.

Property at the end of a street, and at right angles to the street line, does not front on such street. *Duncan v. Ramish*, 142 Cal. 686.

Frontage assessment according to square foot is void.

Under Section 6 of the Statutes of 1909, page 167, (which corresponds to Subdivision 1 above) a frontage assessment must be according to the front foot, and if it is made according to the number of square feet of sidewalk in front of each property owner's property it is void. *City Securities Company v. Harvey*, 176 Cal. 682.

Main street crossings.

Subdivision 2. The expense of the work done on main street crossings shall be assessed at a uniform rate per front foot of the quarter blocks and irregular blocks adjoining and cornering upon the crossings, and separately upon the whole of each lot or portion of a lot having any frontage in the said blocks fronting on said main streets, half way to the next main street crossing, or to the end of such street if it does not meet another, and all the way on said blocks to a boundary line of the city where no such crossing intervenes, but only according to its frontage in said quarter blocks and irregular blocks.

Corner lots.

The provision authorizing an assessment according to the combined frontage is valid as there is a double benefit. *Ross v. Barber Asphalt Paving Company*, 158 Cal. 37.

Main street terminations.

Subdivision 3. Where a main street terminates in another main street, the expenses of the work done on one-half of the width of the street opposite the termination shall be assessed upon the lots in each of the two quarter blocks adjoining and cornering on that side, according to the frontage of such lots on said main street, and the expense of the work on the other half of the width of said street when the work is sewerage of the terminating street only, shall be assessed upon the lots fronting on the termination and the lots adjacent to said lots on each side half way from the termination to the next terminating or intersecting street, according to the frontage of such lots on that side, and in all other work done on the termination, the property fronting on the termination shall be considered frontage and be assessed as set forth in subdivision one of this section.

Alley and main street crossings.

Subdivision 4. Where any alley or subdivision street crosses a main street, the expense of all work done on said crossing shall be assessed on all lots or portions of lots half way on said alley or subdivision street to the next crossing or intersection, or to the end of such alley or subdivision street, if it does not meet another.

Alley and subdivision street crossings.

Subdivision 5. The expense of work done on alley or subdivision street crossings shall be assessed upon the lots fronting upon such alley

or subdivision streets on each side thereof, in all directions, half way to the next street, place or court, on either side, respectively, or to the end of such alley or subdivision street, if it does not meet another.

Alley terminations.

Subdivision 6. Where a subdivision street, avenue, lane, alley, place or court terminates in another street, avenue, lane, alley, place or court, the expense of the work done on one-half of the width of the subdivision street, avenue, lane, alley, place or court opposite the termination, shall be assessed upon the lot or lots fronting on such subdivision street, avenue, lane, alley, place or court so terminating, according to its frontage thereon, half way, on each side respectively, to the next street, avenue, lane, alley, place or court, or to the end of such street, avenue, lane, alley, place or court, if it does not meet another, and the expense of the work on the other half of the width when the work is sewerage of the terminating subdivision street, avenue, lane, alley, place or court, shall be assessed upon the lots fronting on the termination and the lots adjacent to said lots on each side half way from the termination to the next terminating or intersecting street, according to the frontage of such lots on that side, and in all other work done on the termination the property fronting on the termination shall be considered frontage and be assessed as set forth in subdivision one of this section.

One side of street.

Subdivision 7. Where any work mentioned in this act (manholes, sewers, cesspools, culverts, crosswalks, piling and capping excepted) is done on one side of the center line of any street, or sewerage or re-sewerage is ordered to be done under the sidewalk on only one side of any street for any length thereof, the assessment for the expenses thereof shall be made only upon the lots and lands fronting nearest upon that side of the street and for intervening intersections only upon the two quarter blocks adjoining and cornering upon that side.

Public property.

Subdivision 8. Whenever any lot, piece or parcel of land belonging to the United States, or to the State of California, or any lot, piece or parcel of land belonging to any county, city, public agent, mandatory of the government, school board, educational, penal or reform institution, or institution for the feeble-minded or the insane, and being in use in the performance of any public function, shall front upon the proposed work or improvement, or be included within the district declared by the city council in its resolution of intention to be the district to be assessed to pay the costs and expenses thereof, said city council may, in the resolution of intention, declare that said lots, pieces or parcels of land, or any of them, shall be omitted from the assessment thereafter to be made to cover the costs and expenses of said

work or improvement. In the event that said lots, pieces or parcels of land, or any of them, shall by said resolution be omitted from the assessment, then the total expense of all work done shall be assessed on the remaining lots fronting on the work or improvement, or lying within the limits of the assessment district without regard to such omitted lots, pieces, or parcels of land. In the event that the council shall, in such resolution of intention, declare that said lots, pieces or parcels of land so owned as aforesaid, or any of them, shall be included in the assessment, or in the event that no declaration is made respecting such lots, pieces or parcels of land, or any of them, then said city shall be liable for such sum or sums as may thereafter be assessed against any such lots, pieces or parcels of land so owned and used, and so included in the assessment by reason of the aforesaid declaration, or such lots, pieces or parcels of land so owned and used respecting which the resolution of intention makes no declaration, which shall be payable by the said city out of the general fund unless the legislative body shall in its resolution of intention designate another fund.

Public property.

Street assessment cannot be enforced against lots used for school purposes; the complaint must allege that the lots are not used for school purposes, else it is subject to demurrer. *Witter v. Mission School Dist.*, 121 Cal. 350.

Lands of city by private contract.

The city has no power to make a private contract for competitive bidding for doing work in front of its lands. *City Impt. Co. v. Broderick*, 125 Cal. 139.

School lands not in actual use for school purposes.

An assessment for a street improvement by which lands held in trust for the state university which are not in actual use for school purposes, are benefited in value, may be enforced against such lands, the same as the property of a private owner. *City St. Imp. Co. v. Regents of the University of Cal.*, 153 Cal. 776.

Property partially devoted to school purposes.

If part of the property owned by an educational institution may be severed from that part devoted to public use without impairing the value or use of the remainder for public use, the severable part may be separately assessed, otherwise no assessment can be made against any of the property. Even though a part of the property may be severed without impairing the value or use of the remainder for public purposes an assessment against the whole tract is totally void and cannot be enforced against the severable portion. *Raish v. Regents of U. C.*, 27 Cal. App. Dec. 87, (June 29, 1918).

When owners may grade.

Subdivision 9. It shall be lawful for the owner or owners of lots or lands fronting upon any street, the width and grade of which have been established by the city council, to perform, at his or their own expense (after obtaining permission from the council so to do, but before said council has passed its resolution of intention to order grading inclusive of this), any grading upon said street, to its full width, or to the center line thereof, and to its grade as then established, and thereupon to procure, at his or their own expense, a certificate from the city engineer, setting forth the number of cubic yards of cutting and filling made by him or them in said grading, and the proportions performed by each

owner, and that the same is done to the established width and grade of said street, or to the center line thereof, and thereafter to file said certificate with the superintendent of streets, which certificate the superintendent shall record in a book kept for that purpose in his office, properly indexed. Whenever thereafter the city council orders the grading of said street, or any portion thereof, on which any grading certified as aforesaid has been done, the bids and contracts must express the price by the cubic yard for cutting and filling in grading; and the said owner or owners and his or their successors in interest, shall be entitled to credit, on the assessment upon his or their lots and lands fronting on said streets for the grading thereof, to the amount of the cubic yards of cutting and filling set forth in his or their certificate, at the prices named in the contract for said cutting and filling; or, if the grade meanwhile has been duly altered, only for so much of said certified work as would be required for grading to the altered grade; provided, however, that such owner or owners shall not be entitled to such credit as may be in excess of the assessments for grading upon the lots and lands owned by him or them, and proportionately assessed for the whole of said grading; and the superintendent of streets shall include in the assessment for the whole of said grading upon the same grade the number of cubic yards of cutting and filling set forth in any and all certificates so recorded in his office, or for the whole of said grading to the duly altered grade so much of said certified work as would be required for grading thereto, and shall enter corresponding credits, deducting the same as payments upon the amounts assessed against the lots and lands owned, respectively, by said certified owners and their successors in interest; provided, however, that he shall not so include any grading quantities or credit any sums in excess of the proportionate assessments for the whole of the grading which are made upon any lots and lands fronting upon said street and belonging to any such certified owners or their successors in interest. Whenever any owner or owners of any lots and lands fronting on any street shall have heretofore done, or shall hereafter do any work (except grading) on such street, in front of any block, at his or their own expense, and the city council shall subsequently order any work to be done of the same class in front of the same block, said work so done at the expense of such owner or owners shall be excepted from the order ordering work to be done; provided, that the work so done at the expense of such owner or owners, shall be upon the official grade, and in condition satisfactory to the street superintendent at the time said order is passed.

Diagram of assessed district.

Subdivision 10. Whenever the resolution of intention declares that the cost and expenses of the work and improvement are to be assessed upon a district, the city engineer shall make a diagram of the property affected or benefited by the proposed work or improvement, as described

in the resolution of intention, and to be assessed to pay the expenses thereof. Such diagram shall show each separate lot, piece or parcel of land, the area in square feet of each of such lots, pieces or parcels of land, and the relative location of the same to the work proposed to be done, all within the limits of the assessment district; and when said diagram shall have been approved by the city council, the clerk shall certify the fact and date thereof. Immediately thereafter the said diagram shall be delivered to the superintendent of streets of said city, who shall, after the contractor of any street work has fulfilled his contract to the satisfaction of said superintendent of streets or city council on appeal, proceed to estimate upon the lands, lots, or portions of lots within said assessment district, as shown by said diagram, the benefits arising from such work, and to be received by each such lot, portion of such lot, piece or subdivision of land, and shall thereupon assess upon and against said lands in said assessment district the total amount of the costs and expenses of such work, and in so doing shall assess said total sum upon the several pieces, parcels, lots or portions of lots, and subdivisions of land in said assessment district benefited thereby, to-wit: Upon each respectively, in proportion to the estimated benefits to be received by each of said several lots, portions of lots, or subdivisions of land. In other respects the assessment shall be as provided in the next section, and the provisions of subdivisions one, two, three, four, five, six and seven of this section shall not be applicable to the work or improvement provided for in this subdivision.

Railroad property.

Subdivision 11. The terms, lot, lots, lands, piece or parcel of land wherever mentioned in this act shall be deemed to include and shall include property owned or controlled by any person, firm or corporation as a railroad street or interurban railroad right of way, and whenever a railroad street or interurban railroad right of way shall front on or abut or parallel or be included with or divide longitudinally any street improved under the provisions of this act or shall be included within any district to be assessed for the cost of any improvement provided in this act, such railroad right of way (whether the same is owned in fee or as an easement) shall be included in the warrant, assessment and diagram and shall be assessed in the manner and with the same effect as other lots, lands or pieces or parcels of land are assessed as provided in this act, and such railroad, street or interurban railroad right of way shall be subject to sale for nonpayment of assessments as in this act provided. (Amendment approved April 25, 1913, Stats. 1913, p. 78. In effect August 10, 1913.)

Right of way.

The part of a right of way of a railroad company is not liable for a street assessment and the sale may be enjoined. *Southern Cal. Ry. Co. v. Workman*, 146 Cal. 80.

A railroad company is a quasi-public corporation, in whose railroad the public are interested. It holds a franchise from the state, and its right of

way cannot be sold on execution or for a street assessment. *Southern Cal. Ry. Co. v. Workman*, 146 Cal. 80.

A city is without power to levy an assessment on the right of way of a railroad company, or to make a sale of such property to satisfy an assessment, without clear and express authority by the legislature. *San Pedro L. A. & S. L. Ry. Co. v. Pillsbury*, 23 Cal. App. 675.

See also *Acc. Fox v. Workman*, 155 Cal. 201. See *Schaffer v. Smith*, 169 Cal. 764; *Wilson v. Pacific Electric Ry. Co.*, 176 Cal. 248.

All of the above cases arose and were decided upon assessments made prior to the amendment of 1913 authorizing the assessment and sale of railroad property.

Making the assessment.

21. After the contractor of any street work has fulfilled his contract to the satisfaction of the street superintendent of said city, or the city engineer, if such power has been delegated to him, as hereinbefore provided, or of the city council on appeal, the street superintendent shall make an assessment to cover the sum due for the work performed and specified in said contract (including all incidental expenses), in conformity with the provisions of the preceding section according to the character of the work done; or, if any direction and decision be given by said council on appeal, then in conformity with such direction and decision, which assessment shall briefly refer to the contract, the work contracted for and performed, and shall show the amount to be paid therefor, together with all incidental expenses, the rate per front foot assessed, if the assessment be made per front foot, the amount of each assessment, the name of the owner of each lot, or portions of a lot (if known to the street superintendent); if unknown the word "unknown" shall be written opposite the number of the lot and the amount assessed thereon, the number of each lot or portion or portions of a lot assessed, and shall have attached thereto a diagram exhibiting each street or street crossing, lane, alley, place or court, on which any work has been done, showing the relative location of each district, lot, or portion of lot to the work done, numbered to correspond with the numbers in the assessments, and showing the number of feet fronting or number of lots assessed, for said work contracted for and performed. (As amended and in effect August 10, 1915.)

Homestead.

A street assessment lien may be enforced against a homestead. *Perine v. Forbush*, 97 Cal. 305.

Omission to assess a lot.

Omission to assess a lot does not render an assessment void; the error should be corrected upon appeal to the city council. Failure to appeal deprives property owners of right to object in an action to foreclose the assessment. *Buckman v. Landers*, 111 Cal. 347; *Ahlman v. Barber Asphalt Co.*, 28 Cal. App. Dec. 695.

Excessive assessment.

Where a lot is assessed for more than its lawful proportion the remedy is by appeal to the city council, otherwise the error is deemed waived. *Wells v. Woods*, 114 Cal. 255.

Mistake as to frontage in specifications.

Where the resolution of intention and the specifications provide for the improvement of a certain street, a mistake in the specifications as to the amount of frontage of certain lots, (which statement was not required in the specifications) is immaterial if the assessment is for the correct amount of frontage. *Wentland v. Clark and Henry Const. Co.*, 26 Cal. App. Dec. 830, (April 22, 1918).

Delay.

A delay of three years in issuing the assessment and warrant does not necessarily invalidate it. *William v. Bergin*, 116 Cal. 56.

Street assessment obligation same as taxes.

The obligation of the owner to pay a street assessment is the same as it is to pay his taxes. A street assessment is laid by virtue of the power of the state to tax. *Engelbrechtsen v. Gay*, 158 Cal. 30.

Benefits not a judicial question.

The question of benefit to the lot owner cannot be a judicial question, unless the court can plainly see that there could be no benefit, and it is so clear as not to admit of dispute by evidence; otherwise the legislative decision is conclusive. *Duncan v. Ramish*, 142 Cal. 686.

Agreement between contractors and property owners.

The assessment is not invalidated by reason of a private agreement between the contractor and some of the property owners, waiving their right to take the contract in consideration of a reduction in the price of their assessment. "Fraud without injury confers no right of action." *Duncan v. Ramish*, 142 Cal. 686.

Personal judgment.

A personal judgment for a street assessment is unauthorized and void. *Manning v. Den*, 90 Cal. 610; *Gillis v. Cleveland*, 87 Cal. 214.

Personal liability.

No lien can be created by any oral statements of the lot owner, whatever such effect might have upon his personal liability. *Heft v. Payne*, 97 Cal. 108.

Unlawful assessment.

Where the assessment upon defendant's lot does not require extrinsic evidence to show that it was in violation of the statute, the defendants are entitled to object to that portion of the assessment, without having previously appealed to the board. *Perine v. Lewis*, 128 Cal. 236; *City Securities Co. v. Harvey*, 176 Cal. 682.

Personal liability.

There is no personal liability for a street assessment, and there can be no deficiency judgment in an action for its foreclosure. *Page v. Chase Co.*, 145 Cal. 578.

Unknown owners.

Right to assess against unknown owners is permitted. *Barber Asphalt Paving Co. v. Bancroft*, 167 Cal. 188, 189, and cases there cited.

Assessment against portion of frontage only.

The omission from the assessment of one or more lots fronting on the street does not of itself render the assessment void. *San Francisco Paving Co. v. Dubois*, 2 Cal. App. 42.

Error of street superintendent.

No act of the street superintendent or error on his part in accepting the work, can render an assessment and lien void. *Oak Hill Water Co. v. Gillette*, 13 Cal. App. 605.

Correcting mistake in assessment.

Where the superintendent of streets makes a mistake in the amount of the assessment (including work not actually done) he may correct the mistake upon discovering it. Such an assessment is irregular, but not void. *Stotts v. Meese*, 28 Cal. App. Dec. 75, (Dec. 31, 1918).

Varying width of street.

The assessment per front foot must be equal on the entire frontage of all the streets involved in the proceedings, regardless that some of the streets may be narrower than others, and without regard to the varying difficulty of cost of the work at different points along the line of improvement. *Remillard v. Blake & Bilger Co.*, 49 Cal. Dec. 157.

Warrant.

22. To said assessment shall be attached a warrant, which shall be signed by the superintendent of streets, and countersigned by the mayor

of said city. The said warrant shall be substantially in the following form:

Form of Warrant.

By virtue hereof, I (name of the superintendent of streets), of the city of....., county of
(or city and county of.....), State of California, by virtue of the authority vested in me as said superintendent of streets, do authorize and empower (name of contractor) (his or their) agents or assigns, to demand and receive, the several assessments upon the assessment and diagram hereto attached and this shall be (his or their) warrant for the same.

Date:

.....
(Name of superintendent of streets.)

Countersigned by (name of mayor).

Must be dated.

A warrant reciting the year merely without the month or day of the month is invalid. *Shipman v. Forbes*, 97 Cal. 572.

City engineer's successor.

The successor of the city engineer may make the certificate. *Hornung v. McCarthy*, 126 Cal. 17.

Clerical defects.

Clerical omissions in the record of the engineer's certificate or verification of the payment which are immaterial, and could have injured no one, cannot operate to deprive the contractor of his lien. *Moffitt v. Jordan*, 127 Cal. 622.

Date of the warrant.

The thirty days within which to appeal is to be counted from the date of the record of the warrant, not the date of the warrant itself. *Cotton v. Watson*, 134 Cal. 422.

Must be signed.

The warrant may be signed by the acting mayor or executive. *City Street Imp. Co. v. Rontct*, 140 Cal. 55.

Recording warrant, etc.

23. Said warrant, diagram, and assessment, together with the certificate, if any, of the city engineer of the quantity and character of the work done, shall be recorded in the office of said superintendent of streets. When so recorded the several amounts assessed shall be a lien upon the lands, lots, or portions of lots assessed, respectively, for the period of two years from the date of said recording, unless sooner discharged; and from and after the date of said recording of any warrant, assessment and certificate, all persons shall be deemed to have notice of the contents of the record thereof. After said warrant, assessment and certificate are recorded, the same shall be delivered to the contractor, or his agent, or assigns, on demand, but not until after the payment to the said superintendent of streets of the inci-

dental expenses not previously paid by the contractor, or his assigns; and by virtue of said warrant said contractor, or his agents or assigns, shall be authorized to demand and receive the amount of the several assessments made to cover the sum due for the work specified in such contracts and assessments. (As amended and in effect August 10, 1915.)

Personal signature.

Certificate must be signed by engineer in person or by his official deputy. *Rauer v. Lowe*, 107 Cal. 229.

Diagram and assessment—variance.

Any variance between the original recorded diagram and assessment sufficient to prevent notice being given by an inspection of the record as to property sought to be subject to the lien, is material and fatal to the lien. *Labs v. Cooper*, 107 Cal. 656.

Reference to official map.

Description of a lot in the assessment and diagram by the number it bears to the official map of the city is insufficient if there is nothing contained in the assessment referring to said official map. *Labs v. Cooper*, 107 Cal. 656.

Points of the compass on diagram.

A recorded diagram omitting the points of the compass is insufficient and no lien can be found thereon. *Labs v. Cooper*, 107 Cal. 656.

Lot lines on diagram.

Incorrect delineation of the interior lines of a lot on the diagram is not a material defect. *Diggins v. Hartshorne*, 108 Cal. 154.

Contractor may require complete documents.

The contractor may require complete documents to which he is entitled; if he accepts less it is at his own risk. *Ede v. Cuneo*, 126 Cal. 167.

Slight errors in diagram.

A trivial error in the diagram (such as the direction of an arrow) is not material, providing there is sufficient other description to identify the lot assessed. *Blanchard v. Ladd*, 135 Cal. 214.

Character of engineer's certificate.

The statute does not specify the character of a certificate. *San Francisco Paving Co. v. Dubois*, 2 Cal. App. 42.

Omission of signature.

The fact that the street superintendent does not sign an assessment, does not deprive the contractor of his right to a lien. *Petaluma Rock Co. v. Smith*, 23 Cal. App. 100.

Priority between street liens.

Of two valid street assessment liens, the one latest in time is superior. The same rule applies as in liens for general taxes. *Woodhill etc. Co. v. Young*, 58 Cal. Dec. 42, (July 5, 1919).

Demanding payment.

24. The contractor or his assigns, or some person in his or their behalf, shall call upon the persons assessed, or their agents, if they can conveniently be found, and demand payment of the amount assessed to each. If any payment be made, the contractor, his assigns, or some person in his or their behalf, shall receipt the same upon the assessment in presence of the person making such payment, and shall also give a separate receipt if demanded. Whenever the person so assessed, or their agents cannot conveniently be found, or whenever the name of the owner of the lot is stated as "Unknown" on the assessment, then

the said contractor, or his assigns, or some person in his or their behalf, shall publicly demand payment on the premises assessed.

Place of demand.

If at the time of making the demand the contractor stood upon any part of the premises lying within the exterior boundaries of the lot designated in the diagram, the demand is good. *Ede v. Knight*, 93 Cal. 159.

Demand on agent.

The demand may be made by the assignee or agent of the original contractor. *Reid v. Clay*, 134 Cal. 207.

Affidavit of demand in disjunctive.

An affidavit of demand stating that plaintiff "called upon the following persons assessed, or their agents, and demanded payment of the amount assessed to each, respectively," then naming the persons, the lot and the amount of the assessment is not invalid because it does not show whether demand was made upon the owner or his agent. *Bienfeld v. Van Ness*, 176 Cal. 585, 590.

Contractor's return.

25. The warrant shall be returned to the superintendent of streets within thirty days after its date, with a return attached thereto, signed by the contractor, or his assigns, or some person in his behalf, verified upon oath, stating the nature and character of the demand, and whether any of the assessments remain unpaid, in whole or in part, and the amount thereof. Thereupon the superintendent of streets shall record the return so made with the record of the warrant and assessment either in the margin of said record or in the same book with and immediately following the record of the assessment; and also the original contract referred to therein, if it has not already been recorded at full length in a book to be kept for that purpose in his office, and shall sign the record. The said superintendent of streets is authorized at any time to receive the amount due upon any assessment list and warrant issued by him, and give a good and sufficient discharge therefor; provided, that no such payment so made after suit has been commenced, without the consent of the plaintiff in the action, shall operate as a complete discharge of the lien until the costs in the action shall be refunded to the plaintiff; and he may release any assessment upon the books of his office, on the payment to him of the amount of the assessment against any lot with interest, or on the production to him of the receipt of the party or his assigns to whom the assessment and warrant were issued; and if any contractor shall fail to return his warrant within the time and in the form provided in this section, he shall thenceforth have no lien upon the property assessed; provided, however, that in case any warrant is lost, upon proof of such loss a duplicate can be issued, upon which a return may be made, with the same effect as if the original had been so returned. After the return of the assessment and warrant as aforesaid, all amounts remaining due thereon shall draw interest at the rate of ten per cent per annum until paid, said interest to be computed from the date of the recording of the return. (As amended and in effect August 10, 1915.)

Payment by owners of one-half the lot.

Where payment is made by owners of one-half the lot assessed it is proper to so state in the return, but the lien will continue to run against the whole lot and said payment cannot have the effect of releasing any part of the lot. *Williams v. Bergin*, 127 Cal. 578.

Failure to make return in time.

Failure to return his warrant within thirty days of its date, deprives the contractor of his lien upon the property assessed. *City Street Imp. Co. v. Emmons*, 138 Cal. 297.

Signing return.

It need not be signed by the street superintendent. *San Francisco Paving Co. v. Egan*, 146 Cal. 635.

Final objections.

26. The owners, whether named in the assessment or not, the contractor, or his assigns, and all other persons directly interested in any work done under this act, or in the assessment, feeling aggrieved by any act or determination of the superintendent of streets in relation thereto, or who claim that the work has not been performed according to the contract in a good and substantial manner, or having or making any objection to the correctness or legality of the assessment or other act, determination or proceedings of the superintendent of streets, shall, within thirty days after the date of the warrant appeal to the city council as provided in this section, by briefly stating their objections in writing, and filing the same with the clerk of said city council. Notice of the time and place of the hearing, as fixed by the council, briefly referring to the work contracted to be done, or other subject of appeal, and to the acts, determinations, or proceedings objected to or complained of, shall be posted conspicuously by the clerk, on or near the chamber door of the council chambers, for five days. Upon such appeal, the said city council may remedy and correct any error or informality in the proceedings, and revise and correct any of the acts of determinations of the superintendent of streets relative to said work; may confirm, amend, set aside, alter, modify or correct the assessment in such manner as to them shall seem just, and require the work to be completed according to the directions of the city council; and may instruct and direct the superintendent of streets to correct the warrant, assessment, or diagram in any particular, or to make and issue a new warrant, assessment and diagram, to conform to the decisions of said city council in relation thereto, at their option. All the decisions and determinations of said city council, upon notice and hearing as aforesaid, shall be final and conclusive upon all persons entitled to appeal under the provisions of this section, as to all errors, informalities, and irregularities which said city council might have avoided, or have remedied, during the progress of the proceedings, or which it can at that time remedy. No assessment, warrant, diagram or affidavit of demand and nonpayment, after the issue of the same, and no proceedings prior to the assessment, shall be held invalid by any court for any error, informality, or other defect in the same, where the resolution of intention of the council to do the work, has been actually published as

herein provided, and said notices of improvement have been posted along the line of the work, as provided in Section 5 of this act, before the passage of the resolution ordering the work to be done.

Effect of councilman owning property assessed.

The interest which one or all the members of the council may have arising from the ownership of property directly affected by the improvement does not disqualify them to act in the making or rectifying of the assessment so as to render their acts void as not constituting due process of law. *Federal Const. Co. v. Curd*, 57 Cal. Dec. 38 (Dec. 31, 1918).

Form of appeal.

No formality is required in the form of an appeal where the words "protests" or "objections" are used instead of the word "appeal"; it is sufficient. *Belser v. Hoffschneider*, 104 Cal. 455.

Reconsideration.

An appeal sustained and the assessment vacated cannot be set aside and reconsidered. *Belser v. Hoffschneider*, 104 Cal. 455.

Improper grade no ground for appeal.

Where the work was not done to the official grade, but to a line that had been proposed for a change of the official grade, and no appeal was taken to the board, a property owner cannot defend an action to foreclose the lien. *Warren v. Riddell*, 106 Cal. 352.

Failure to sign contract.

The objection that the contractor failed to sign the contract within the time allowed by law is not waived by failure to appeal to the council. *Schmidt v. Santa Monica etc. Co.*, 27 Cal. App. Dec. 783, (Dec. 9, 1913), (Construing Vrooman Act.)

Discrepancy in map.

Where the precise length of one side of a street at its intersection with another has never been officially declared, and there are discrepancies in the map as to its length, the assessment is not invalidated thereby, but may be remedied on appeal. *Diggins v. Hartshorne*, 108 Cal. 154.

Appeal by one owner.

An appeal made by one assessed owner, going to the whole work done under the contract, operates to stay proceedings against all assessed owners until the appeal is regularly determined after publishing notice and hearing. *Girvin v. Simon*, 127 Cal. 491.

Insufficient performance of work.

This question can only be presented to the city council on appeal, and the decision of the council is conclusive; the question cannot be raised by way of objection to the validity of the assessment. *Lambert v. Bates*, 137 Cal. 676.

An appeal on the ground that the work has not been performed properly, if sustained, sets aside the acceptance of the work by the street superintendent, and the assessment, diagram and warrant are set aside and reversed; and the council cannot rescind its action. A new assessment must be subsequently ordered. *Creed v. McCombs*, 146 Cal. 449.

Erroneous assessment.

If the street superintendent has assessed the lot for a greater amount than it should have been assessed, and the excess does not show upon its face, the error should have been corrected upon appeal to the city council, and such error is unavailing when an action is taken to foreclose the lien on the assessment. *Bates v. Hadumson*, 2 Cal. App. 574.

An erroneous computation of an assessment or improper distribution of the cost upon the lands assessable therefor, is an error which is waived by failure to appeal to the council. *Beckett v. Morse*, 4 Cal. App. 228.

Omission of lot in assessment.

The sole remedy for the omission of a lot that should be assessed in a district assessment is an appeal to the council and a failure to appeal on this ground amounts to a waiver of such objection. The property owner should specify the lot or lots omitted and offer evidence in support of his claim. *Ahlman v. Barber Asphalt Co.*, 28 Cal. App. Dec. 695, (March 22, 1919). (Construing Vrooman Act.)

Inclusion of an illegal charge in assessment.

If the assessment includes an illegal charge (search of records to ascertain frontage of the lots), the sole remedy is by an appeal to the city council.

One who fails to appeal cannot have the assessment declared void because of the inclusion of an illegal charge. *Ahlman v. Barber Asphalt Etc. Co.*, 28 Cal. App. Dec. 695, (March 22, 1919).

Hearing imperative.

Publication of the notice of hearing is imperative, and property owner is not estopped from setting up failure to publish even though he appeared at the hearing. *Southern Con. Co. v. Howells*, 21 Cal. App. 330.

Fair hearing imperative.

The council must give a fair hearing and in judicial determination on an appeal to it against the assessment, and if it fails to give such hearing and determination, the property owner may seek relief in the courts. The dismissal of an appeal on the ground that the assessment would have to go to the courts in any event without a full hearing is not binding on the property owner as to the finality of the assessment, as it is not a judicial determination. *Cutting v. Vaughn*, 28 Cal. App. Dec. 72, (Dec. 30, 1918). (Pending before Supreme Court.)

See also *Nutting v. City of Los Angeles*, 35 Cal. App. 519 (Act of 1903).

Review of council's action.

If the council holds a hearing on the amount of the assessment, and there is any reasonable ground upon which the council may be said to have made the assessment according to benefits, the action of the council cannot be reviewed on *certiorari*. *Rockridge Etc. Co. v. City Council, etc.*, 55 Cal. Dec. 607, (April 1, 1918).

Failure to appeal.

Where the plaintiff in an action to quiet title against the contractors, fails to appeal from the determination of the street superintendent, as to completion of work and erroneous levy of assessment, it must be presumed that if he had done so council would have ordered the errors corrected, and the order of court foreclosing the lien must be affirmed. *Oak Hill Water Co. v. Gillette*, 13 Cal. App. 605.

Failure to appeal.

An owner who fails to appeal to the city council and contest the assessment is precluded, in a suit to defeat the deed, from claiming that the lot was not worth the amount of the assessment after the improvement was made. (Under Act of 1885.) *Empire Securities Co. v. Matthews*, 56 Cal. Dec. 432, (Nov. 12, 1918).

Assessment void on its face.

Where the assessment is void on its face, a property owner is not required to seek its correction by an appeal to the city council, but may rely upon its invalidity as a defense to enforcing the lien. *City Securities Co. v. Harvey*, 176 Cal. 682.

Contractor's suit.

27. At any time after the period of thirty-five days from the day of the date of the warrants, as herein provided, or if an appeal is taken to the city council, as provided in Section 26 of this act, at any time after five days from the decision of said council, or after the return of the warrant or assessment after the same may have been corrected, altered, or modified, as provided in said Section 26 (but not less than thirty-five days from the date of the warrant), the contractor or his assignee may sue, in his own name, the owner of the land, lots or portions of lots, assessed on the day of the date of the recording of the warrant, assessment, and diagram, or any day thereafter during the continuance of the lien of said assessment, and recover the amount of any assessment remaining unpaid, with interest thereon at the rate of ten per cent per annum until paid. And in all cases of recovery under the provisions of this act, where personal demand has been made upon the owner or his agent, but not otherwise, the plaintiff shall recover such sum as the court may fix, in addition to the taxable cost

as attorney's fees, but not any percentage upon said recovery. And when suit has been brought, after a personal demand has been made, and a refusal to pay such assessment so demanded, the plaintiff shall be entitled to have and recover the sum of fifteen dollars as attorney's fees, in addition to all taxable costs, notwithstanding that the suit may be settled or a tender may be made before a recovery in said action, and he may have judgment therefor. Suit may be brought in the superior court within whose jurisdiction the city is in which said work has been done, and in case any of the assessments are made against lots, portions of lots, or lands, the owners whereof cannot, with due diligence, be found, the service of each of said actions may be had in such manner as is prescribed in the codes and laws of this state. It shall be competent to bring a single action under any such assessment irrespective of the number of lots assessed where the parties defendant are identical, and where separate actions are brought, the same may be consolidated by order of the court. The said warrant, assessment, certificate and diagram, with the affidavit of demand and non-payment, shall be held prima facie evidence of the regularity and correctness of the assessment and of the prior proceedings and acts of the superintendent of streets and city council upon which said warrant, assessment and diagram are based, and like evidence of the right of the plaintiff to recover in the action.

In a complaint in any such action it shall be held sufficient to allege briefly that the city council ordered the work, the performance of the work under the contract, the making of the assessment, the issuing of said warrant and certificate and the making of said diagram; that an assessment (naming the amount) was levied against that certain lot or parcel of land (describing the same) which, according to the information and belief of the plaintiff, is owned by the defendant; that payment of said assessment has been demanded in the time, form and manner prescribed in this act and that the same has not been paid.

In describing said lot or parcel of land in said complaint it shall be sufficient to refer to the same by its number upon said diagram, provided a certified copy of said warrant, assessment and diagram shall have been previously filed in the office of the recorder of the county or city and county in which the same is situated. It shall be the duty of such recorder to so file any such certified copy presented to him upon payment of the filing fee therefor, which fee is hereby fixed at fifty cents. (As amended and in effect August 10, 1915.)

Parties in foreclosure proceedings.

Legal owner should be a party, also one who acquired title under a foreclosure of a prior street assessment lien. *Brady v. Burke*, 90 Cal. 1.

Authorized under taxing power.

The right of the contractor to enforce an assessment grows out of the taxing power. A property owner cannot set up a right of action for damages as a defense, or a setoff or counterclaim, to the cause of action set up by the contractor. *Hornung v. McCarthy*, 126 Cal. 17.

Property of an estate.

In an action to foreclose a lien against the property of an estate, complaint must contain an averment touching upon the estate. *Flian v. Gouley*, 139 Cal. 623.

Prima facie case.

Upon the foreclosure of a street assessment, a prima facie case is made by introducing in evidence the assessment, diagram, warrant, return, and engineer's certificate, which can only be overcome by affirmative proof of a failure of the board to perform some act essential to the validity of the assessment. *Dowling v. Hibernia Savs. & L. Society*, 143 Cal. 425.

Priority of lien.

A lien for public taxes and assessments is paramount to all liens acquired by personal contract; and the liens for an assessment for a street improvement is superior to the lien of a prior mortgage upon the property assessed. *O'Dea v. Mitchell*, 144 Cal. 374.

Lis pendens must be filed.

A notice of lis pendens must be filed in commencing an action to foreclose a street assessment. *Page v. Chase Co.*, 145 Cal. 578.

Attorney's fees.

When one defendant is owner of several lots and the liens are sought to be enforced in a single action, a single attorney's fee only can be recovered in such action. *McCaleb v. Dreyfus*, 156 Cal. 204.

The allowance of fifteen dollars as attorney's fees in an action to foreclose the lien of a delinquent street assessment is valid. *Eugebretsen v. Gay*, 158 Cal. 30.

Counterclaim and cross-complaint.

Property-owner has no cause of action against contractor for trespass alleged to have been committed in piling dirt upon abutting property. *Eugebretsen v. Gay*, 158 Cal. 29.

Separate causes of action.

A separate cause of action exists as to each lot separately assessed, notwithstanding the same person may own two or more such lots, and attorney's fees and costs are recoverable for each action commenced. *Realty Cons. & M. Co. v. Superior Court*, 165 Cal. 543.

One suit sufficient.

A single action may be brought against three owners in common of all the lots in suit. *Barber A. P. Co. v. Crist*, 21 Cal. App. 1.

Pleading.

It is not necessary to particularly plead all the various steps in the proceedings, but the acts of the board and officers may be stated to have been duly given and made as provided in section 456 of the Code of Civil Procedure. *Locke v. Cowan*, 25 Cal. App. Dec. 361; *Bienfield v. Van Ness*, 176 Cal. 585.

New assessment permitted.

28. Whenever, in any suit, the lien of an assessment or reassessment, or of a bond issued for the cost of such work, shall be held invalid for any cause arising subsequent to the publication and posting of the resolution of intention and the posting of the notices of improvement along the line of work, or because the work or any part thereof is not sufficiently described in the resolution of intention, the contractor or his assigns, or the holder of such bond, shall have the right, within sixty days thereafter, to apply for and receive a new assessment for the cost of the work done and sufficiently described in the resolution of intention or specifications on file, such cost to be assessed upon the property and in the same manner as provided in Sections 20 and 21 of this act; and the street superintendent shall, within twenty days after such application, make and deliver to said

applicant a new assessment, warrant and diagram in accordance with the law governing the issuance of originals of such documents, and the mayor shall in like manner countersign the said warrant, which reassessment shall be a lien on the property so assessed for two years from the date of the recording of said reassessment and warrant and be enforced in the same manner as an original assessment would be enforced. If an appeal be taken from the judgment in which such an assessment is held invalid, the time herein provided for making application for a new assessment shall not begin until such case be in some manner finally disposed of.

Selling premises on execution.

29. The court in which said suit shall be commenced shall have power to adjudge and decree a lien against the premises assessed, and to order such premises to be sold on execution, as in other cases of the sale of real estate by the process of said courts; and on appeal, the appellate courts shall be vested with the same power to adjudge and decree a lien and to order such premises to be sold on execution or decree as is conferred on the court from which an appeal is taken. Such premises, if sold, may be redeemed as in other cases. In all suits now pending or hereafter brought under this act to recover street assessments, the proceedings therein shall be governed and regulated by the provisions of this act, and also, when not in conflict herewith, by the codes of this state.

Sale for delinquent assessment.

The sale is limited to the identical lot described in the assessment, no more or less, otherwise the sale is void. *Los Angeles etc. v. Pozzi*, 167 Cal. 457.

Partial assessment.

30. The city council, instead of waiting until the completion of the improvement, may, in its discretion, and not otherwise, upon the completion of two blocks or more of any improvement, order the street superintendent to make an assessment for the proportionate amount of the contract completed, and thereupon proceedings and rights of collection of such proportionate amount shall be had as provided in the preceding sections.

Repairs.

31. When any portion of any improved street, avenue, lane, alley, court, or place in said city, or any sidewalk constructed thereon shall be out of repair, or pending reconstruction, and in condition to endanger persons or property passing thereon, or in condition to interfere with the public convenience in the use thereof, it shall be the duty of said superintendent of streets to require, by notice in writing, to be delivered to them or to their agent personally, or left on the premises, the owners or occupants of lots or portions of lots fronting on said portion of said street, avenue, alley, lane, court, or place, or said portion of said sidewalk so out of repair or needing reconstruction as

aforesaid, to repair or reconstruct, or to do both, forthwith, said portion of said street, avenue, lane, alley, court, or place, to the center line of said street in front of the property of which he is the owner, or tenant, or occupant; and said superintendent of streets shall particularly specify in said notice what work is required to be done, and how the same is to be done, and what material shall be used in said repairs, or reconstructions, or both. If said repairs, or reconstructions, or both, be not commenced within three days after notice given as aforesaid, and diligently and without interruption prosecuted to completion, the said superintendent of streets may, under authority from said city council, make such repairs, reconstructions, or both, or enter into a contract with any suitable person, at the expense of the owner, tenant, or occupant, after the specification for the doing of said work shall have been conspicuously posted by him in his office for two days, inviting bids for the doing of said work, which bids shall be delivered to him at his office on or before the second day of said posting, and opened by him on the next day following the expiration of said two days of posting, and the contract by him be awarded to the lowest bidder, if such lowest bid, in the judgment of said street superintendent, shall be reasonable. All of said bids shall be preserved in his office and open at all times after the letting of the contract to the inspection of all persons, and such owner, tenant, or occupant shall be liable to pay said contract price. Such work shall be commenced within twenty-four hours after the contract shall have been signed, and completed without delay to the satisfaction of said street superintendent. Upon the completion of said repairs, or reconstruction, or both, by said contractors as aforesaid, to the satisfaction of said superintendent of streets, said superintendent of streets shall make and deliver to said contractor a certificate to the effect that said repairs, or reconstruction, or both, have been properly made by said contractor to the grade, and that the charges for the same are reasonable and just, and that he, said superintendent, has accepted the same.

Suit for repairs.

32. If the expenses of the work and material for such improvement, after the completion thereof, and the delivery to said contractor of said certificate, be not paid to the contractor so employed, or his agent or assignee, on demand, the said contractor, or his assignee, shall have the right to sue such owner, tenant, or occupant, for the amount contracted to be paid; and said certificate of the superintendent of streets shall be prima facie evidence of the amount claimed for said work and materials, and of the right of the contractor to recover for the same in such action. Said certificate shall be recorded by the said superintendent of streets in a book kept by him in his office for that purpose, properly indexed, and the sum contracted to be paid shall be a lien, the same as provided in Section 23 of this act, and may be enforced in the same manner.

Additional penalty for neglect.

33. In addition, and as cumulative to the remedies above given, the city council shall have power, by resolution or ordinance, to prescribe the penalties that shall be incurred by any owner or person liable, or neglecting, or refusing to make repairs when required, as provided in Section 31 of this act, which fines and penalties shall be recovered for the use of the city by prosecution in the name of the people of the state of California in the court having jurisdiction thereof, and may be applied, if deemed expedient by the said council, in the payment of the expenses of any such repairs not otherwise provided for.

Tenant may pay assessment.

34. Any tenant or lessee of the lands or lots liable may pay the amount assessed against the property of which he is the tenant or lessee under the provisions of this act, or he may pay the price agreed on to be paid under the provisions of Section 30 of this act, either before or after suit brought, together with costs, to the contractor, or his assigns, or he may redeem the property, if sold on execution or decree for the benefit of the owner, within the time prescribed by law, and deduct the amount, so paid from the rents due and to become due from him, and for any sums so paid beyond the rents due from him, he shall have a lien upon and may retain possession of the said land and lots until the amount so paid and advanced be satisfied, with legal interest, from accruing rents, or by payment by the owner.

Service of notice.

35. Notices in writing which are required to be given by the superintendent of streets, under the provisions of this act, may be served by any person, with the permission of the superintendent of streets, and the fact of such service shall be verified by the oath of the person making it, taken before the superintendent of streets, who for that purpose, and for all other purposes, and in all cases where a verification is required under the provisions of this act, is hereby authorized to administer oaths, or other person authorized to administer oaths or such notices may be delivered by the superintendent of streets himself, who must also verify the service thereof, and who shall keep a record, of the fact of giving such notices, when delivered by himself personally, and also of the notices and proof of service when delivered by any other person.

Accepted streets.

36. Repealed (effectual August 10, 1915).

Recitals in accepting ordinance.

Acceptance of a street under the provisions of the statute as it heretofore stood relating to accepted streets is binding, regardless of the fact that the city ordinance accepting the street did not recite that it had been "fully con-

structed to the satisfaction of the superintendent of streets and the city council" or that it was "in good condition throughout." *Barber Asphalt P. Co. v. Jurgens*, 49 Cal. Decisions p. 740, Case S. F. 6460.

The city council has no jurisdiction to accept a street until gas pipes, water pipes, etc., have been laid therein as provided by the statute, and an ordinance of acceptance which declares that such pipes have been laid when, as a matter of fact they have not, is void and of no effect. *Raisch Imp. Co. v. Bondslett*, Cal. App. Decisions Oct. 25, 1915.

NOTE.—The supreme court has never passed on the question as to the status of an accepted street after the repeal of both the statute and the ordinance of acceptance.

Records of street superintendent.

37. The superintendent of streets shall keep a public office in some convenient place within the municipality, and such records as may be required by the provisions of this act. The records so kept and signed by him, shall have the same force and effect as other public records, and copies therefrom duly certified, may be used in evidence with the same effect as the originals. The said records shall, during all office hours, be open to the inspection of any person wishing to examine them, free of charge.

Note.

A street superintendent's record book in loose leaf form, designed by a committee of expert street lawyers and covering all the requirements of the act, is published and sold by A. CARLISLE & Co., 251 Bush Street, San Francisco, Cal.

Superintendent's record, one book.

The warrant, assessment, diagram and engineer's certificate must be recorded in one book. *Rauer v. Lowe*, 107 Cal. 229.

Must sign record.

Failure of the street superintendent to sign the record of the return of the warrant is a fatal omission. *Witter v. Bachman*, 117 Cal. 318.

Duty of street superintendent.

38. It shall be the duty of the superintendent of streets to see that the laws, ordinances, orders, and regulations relating to the public streets and highways be fully carried into execution, and that the penalties thereof are rigidly enforced. He shall keep himself informed of the condition of all public streets and highways, and also of all public buildings, parks, lots, and grounds of said city, as may be prescribed by the city council. He shall, before entering upon the duties of his office, give bonds to the municipality, with such sureties and for such sums as may be required by the city council; and should he fail to see the laws, ordinances, orders, and regulations relative to the public streets or highways carried into execution, after notice from any citizen of a violation thereof, he and his sureties shall be liable upon his official bond to any person injured in his person or property in consequence of said official neglect. He shall superintend and direct the cleaning of all sewers, and the expense of the same shall be paid out of the street or sewer fund of said city.

Damages, defective streets.

39. If, in consequence of any graded street or public highway or sidewalk, being out of repair and in condition to endanger persons or property passing thereon, any person, while carefully using said street or public highway, or sidewalk and exercising ordinary care to avoid the danger, suffer damage to his person or property, through any such defect therein, no recourse for damages thus suffered shall be had against such city; but if such defect in the street or public highway shall have existed for a period of twenty-four hours or more after written notice thereof to the said superintendent of streets, then the person or persons on whom the law may have imposed the obligations to repair such defect in the street or public highway, and also the officer or officers through whose official negligence such defect remains unrepaired, shall be jointly and severally liable to the party injured for the damage sustained; provided, that said superintendent has the authority to make said repairs, under the direction of the city council, at the expense of the city.

Partial expenses from treasury.

40. The city council may, in its discretion, order, by resolution that the whole or any part of the cost and expenses of any of the work mentioned in this act be paid out of the treasury of the municipality from such fund as the council may designate, in which case it shall be so stated in the resolution of intention. Whenever a part of such cost and expenses is so ordered to be paid, the superintendent of streets, in making up the assessment heretofore provided for such cost and expenses, shall first deduct from the whole cost and expenses such part thereof as has been so ordered to be paid out of the municipal treasury, and shall assess the remainder of said costs and expenses proportionately upon the lots, parts of lots and lands fronting on the streets where said work was done, or liable to be assessed for such work, and in the manner heretofore provided.

City engineer.

41. The city engineer, or where there is no city engineer, the county or city and county surveyor, shall be the proper officer to do the surveying and other engineering work necessary to be done under this act, and to survey and measure the work to be done under contracts for grading and macadamizing streets, and to estimate the costs and expenses thereof; and every certificate signed by him in his official character shall be prima facie evidence in all courts in this state of the truth of its contents. He shall also keep a record of all surveys made under the provisions of this act, as in other cases. In all those cities where there is no city engineer, the city council thereof is hereby authorized and empowered to appoint a suitable person to discharge the duties herein laid down as those of city engineer, and all the provisions

hereof applicable to the city engineer shall apply to such person so appointed. Said city council is hereby empowered to fix his compensation for such services.

Inspector.

42. The superintendent of streets (or the city engineer, if the city council has by resolution directed that the work be done under his direction and to his satisfaction, as provided in Section 18 of this act) shall, when in his judgment it is necessary appoint a suitable person or persons to take charge of and superintend the construction and improvement of any work authorized by this act, whose duty it shall be to see that the contract made for the doing of said work is strictly fulfilled in every respect and in case of any departure therefrom to report the same to the superintendent of streets, or to the city engineer, if appointed by him. Such person shall be allowed for his time actually employed in the discharge of his duties such compensation as shall be just, but not to exceed five dollars per day. The sum to which the party so employed shall be entitled shall be deemed to be incidental expenses within the meaning of those words as defined by this act. (As amended and in effect August 10, 1915.)

PART II.

Change of grade.

43. The city council is hereby empowered to change or modify the grade of any public street, lane, alley, place or court, and to regrade or repave the same, so as to conform to such modified grade, in the manner as hereinafter provided. Before any change of grade is ordered the city council shall pass a resolution of intention to make such change or modification of grade, and it shall have power at the same time and in the same resolution to provide for the actual cost of performing the work of regrading, repaving, sewerage, sidewalking, or curbing of said street or portion of street, with the same or other material with which it was formerly graded, paved, sewerage, sidewalked, or curbed; and that the cost of the same shall also be assessed upon the same district which is declared to be benefited by such changed or modified grade. One or more streets or blocks of streets may be embraced in the same resolution. Such resolution shall be published twice in the newspaper in which the official notices of the city council are usually printed and published, to be designated in such resolution and shall describe the proposed change or modification of grade or regrading, and shall designate and establish the district to be benefited by such change or modification of grade or regrading, and to be assessed for the cost of the same. The superintendent of streets shall also cause to be conspicuously posted within the district designated in the resolution, notice of the passage of said resolution. Said notice shall be the same in all requirements of contents and posting as

the "notices of improvement" provided for in Section 5 of this act. If no objection to said proposed change or changes, or modifications of grade, shall be filed with the clerk of the council within thirty days from the first publication of the resolution of intention hereinbefore mentioned, or, if objections are presented, and after due notice and hearing are overruled by the council, the city council shall have power to order and declare such grades to be changed and established in conformity to said resolution, which order shall be posted by the clerk on the chamber door of the council for five days. (As amended and in effect August 10, 1915.)

Damages for change of grade.

An owner of land injured by change of grade is entitled to compensation for such injury, whether it be change from the natural grade or change from the official grade. *Eachus v. Los Angeles Con. Elect. Railroad Co.*, 103 Cal. 614.

Damage can only be sustained by change in the natural grade, and not by the ordinance fixing the grade. *Eachus v. Los Angeles Con. Elect. Railroad Co.*, 103 Cal. 614.

The right to damages by reason of a change of grade arises solely under the constitution. If the owner desires to preserve his right to antecedent payment he must sue to enjoin the work; and if he fails to do so before the street is improved to the changed grade, he is remitted to his right of action against the city for damages, which is an independent right and cannot affect the validity of an assessment for grading and improving the street. *Duncan v. Ramish*, 142 Cal. 686.

The grantee of one who dedicates a street to the public is not estopped by reason of the dedication from obtaining damages from the city for bringing the street to the official grade. (Under Act of 1903.) *Partridge v. Richmond*, 36 Cal. App. 389.

Claiming damages.

44. Within thirty days after the first posting of said order, as aforesaid, any person owning property fronting upon said portions of the street or streets where such change of grade is made, may file a petition with the clerk of the city council showing the fact of such ownership, the description and situation of the property, its market value, and the estimated amount of damages over and above all benefits which the property would sustain by the proposed change if completed. Such petition shall be verified by the oath of the petitioners or their agents.

Commissioners.

45. Whenever such petition or petitions have been filed, the mayor, engineer or surveyor, and superintendent of streets of the city, or city and county, or board of public works if there be such a board acting as a board of commissioners, shall assess the benefits, damages, and costs of the proposed change of grade upon each separate lot of land situated within such assessment district showing the same by a plat as said lot appears of record upon the last city, or city and county assessment roll. The commissioners shall be sworn to make the assessments of benefits and damages to the best of their judgment and ability, without fear or favor. The commissioners shall have power to subpoena witnesses to appear before them to be examined under oath, which any one of said commissioners is authorized to administer.

Damages and benefits.

46. The commissioners having determined the damage which would be sustained by each petitioner, in excess of all benefits, shall proceed to assess the total amount thereof, together with the costs, charges, and expenses of the proceedings, upon the several lots of land benefited within the district of assessment, so that each of the lots shall be assessed in accordance with its benefits caused by such work or improvement; and during the progress of their work shall make a report to such city council as often as it may be required.

Damages deemed waived.

Those who do not ask for damages under the notice and hearing on the question of damages, may be deemed to have waived them. *German Savings & Loan Society v. Ramish*, 138 Cal. 120.

Report of commissioners.

47. The commissioners shall make their report in writing, and shall subscribe to the same and file it with the city council. In their said report they shall describe separately each piece of property which will sustain damage, stating the amount of damages each will sustain over and above all benefits. They shall also give a brief description of each lot benefited within said assessment district, the name of the owner, if known, and the amount of benefits in excess of damages assessed against the same. In case the three commissioners do not agree, the award agreed upon by a majority of them shall be sufficient. In designating the lots to be assessed, reference may be had to a diagram of the property in the district affected; such diagram to be attached to and made a part of the report of the commissioners. If in case the commissioners find that conflicting claims of title exist, or shall be in ignorance or doubt of the ownership of any lot or land, or any improvement thereon, or any interest therein, it shall be set down as belonging to unknown owners. Error in the designation of the owner or owners of any land or improvements, or particulars of their interest, shall not affect the validity of the assessment.

Notice of hearing report.

48. On the filing of said report, the clerk of said city council shall give notice of such filing by publication twice in one or more daily newspapers, or in a weekly or semi-weekly newspaper so published and circulated; and said notice shall require all persons interested to show cause, if any, why such report should not be confirmed, before the city council, on a day to be fixed by the city council and stated in said notice, which day shall not be less than twenty days from the first publication thereof.

Objections to report.

49. All objections shall be in writing and filed with the clerk of the city council, who shall, at the next meeting after the date fixed in the

notice to show cause, lay the said objections, if any, before the council, which shall fix a time for hearing the same; of which time the clerk shall notify the objectors in the same manner as are notified objectors to the original resolution of intention. At the time set, or at such other time as the hearing may be adjourned, the city council shall hear such objections and pass upon the same, and at such time shall proceed to pass upon such report, and may confirm, correct, or modify the same, or may order the commissioners to make a new assessment, report, and plat, which shall be filed, notice given and had, as in the case of an original report.

Advertising for bids.

50. In case the resolution of intention also provides for the assessing upon the district the cost of regrading or repaving such street or streets to such changed or modified grade, after the report of the commissioners as to the damages caused by such change of grade has been passed upon by the city council, it shall then advertise for bids to perform the work of regrading, repaving, sewerage, sidewalking or curbing such street or streets with the same or other material with which the same had been formerly graded, paved, sewerage, sidewalked, or curbed; first causing a notice, with specifications, to be posted conspicuously for five days on or near the council chamber door, inviting sealed proposals or bids for doing such work, and shall also cause notices of said work, inviting said proposals and referring to the specifications posted or on file, to be published twice, in a daily, semi-weekly, or weekly newspaper published and circulated in said city, and designated by the city council for that purpose. All proposals or bids offered shall be accompanied by a check, payable to the city, and certified by a responsible bank, which shall not be less than ten per cent of the aggregate of the proposals; or by a bond for said amount, signed by the bidder and two sureties, who shall justify under oath in double said amount over and above all statutory exemptions. Said proposals or bids shall be delivered to the clerk of the said city council, and said council shall in open session publicly open, examine and declare the same; provided, however, that no proposal or bid shall be considered unless accompanied by a check or a bond satisfactory to the council. The city council may reject any and all bids, and may award the contract to the lowest responsible bidder. If not accepted the city council may readvertise for proposals or bids as in the first instance, and thereafter proceed in the manner in this section provided. All checks accompanying bids shall be held by the clerk until such successful bidder has entered into a contract, as herein provided; and in case he refuses so to do, then the amount of his certified check shall be declared forfeited to the city, and shall be collected and paid into its general fund, and all bonds so forfeited shall be prosecuted, and the amount thereof collected and paid into such fund. Notice of the

awards of the contracts shall be published and posted in the same manner as hereinbefore in this section provided for the posting of proposals for said work.

Making assessment.

51. After such contract has been awarded and entered into, the clerk of the city council shall certify to the city council that fact, together with the total amount of the cost of the same, whereupon the city council shall cause to be forwarded to the commissioners a copy of such certificate; whereupon such commissioners shall proceed to assess the cost of doing such work upon all the lots and land lying within the district to be assessed, distributing the same so that each lot will be assessed for its proportion of the same, according to the benefits it receives from the work, and in the same manner in which the damages caused by the change of grade were assessed upon the same. Such commissioners in making such assessment shall show the total amount for which each lot or tract is assessed in excess of all benefits, for the total cost of changing and modifying the grade of the street, as well as the regrading, repaving, sewerage, sidewalking, and curbing of the same, and costs or damages connected therewith. The provisions of Part I of this act in regard to the mode or manner of the assessment of the cost of such work shall not apply to the work in this part contemplated; neither shall the provisions of this act in regard to the issuing of bonds to represent the cost of the same, nor the provisions in regard to the right of protest against the work apply.

Assessment-roll.

52. The clerk of said city council shall forward to the street superintendent of the city a certified copy of the report, assessment, and plat, as finally confirmed and adopted by the city council. Such certified copy shall thereupon be the assessment-roll, the cost of which shall be provided for by the commissioners, as a portion of the cost of the proceedings therein. Immediately upon receipt thereof by the street superintendent, the assessment therein contained shall become due and payable, and shall be a lien upon all the property contained or described therein.

Collecting assessments.

53. The superintendent of streets shall thereupon give notice, by publication twice in one or more daily newspapers published and circulated in said city, or city and county, or in a weekly or semi-weekly newspaper so published and circulated, that he has received said assessment-roll, and that all sums levied and assessed in said assessment-roll are due and payable immediately, and that the payment of said sums is to be made to him within thirty days from the date of the first publication of said notice. Said notice shall also contain a statement that all assessments not paid before the expiration of said thirty days

will be declared to be delinquent, and that thereafter the sum of five per cent upon the amount of such delinquent assessment, together with the cost of advertising each delinquent assessment will be added thereto. When payment of any assessment is made to said superintendent of streets, he shall write the word "Paid" and the date of payment opposite the respective assessment so paid, and the name of the persons by or for whom said assessment is paid, and shall give a receipt therefor. On the expiration of said thirty days, all assessments then unpaid shall be and become delinquent, and said superintendent of streets shall certify such fact at the foot of said assessment-roll, and shall add five per cent to the amount of each assessment so delinquent. After the date of said delinquency no assessment shall be received unless said five per cent together with all costs be paid therewith.

Sale of property.

54. The said superintendent of streets shall, within five days from the date of such delinquency, proceed to advertise the various sums delinquent, and the whole thereof, including the cost of advertising, which last shall not exceed the sum of fifty cents for each lot, piece or parcel of land separately assessed. Said list of delinquent assessments, with a notice of the time and place of sale of the property affected thereby, shall be published twice in one or more daily newspapers published and circulated in such city, or in a weekly newspaper so published and circulated before the day of sale for such delinquent assessment. Said time of sale must not be less than seven days from the date of the first publication of said delinquent assessment list, and the place must be in or in front of the office of said superintendent of streets. If any assessment together with said penalty and costs be not paid before the time of sale the street superintendent shall proceed to sell and shall sell each lot, piece or parcel of land separately assessed at public auction to the bidder offering to pay the amount due for the least portion of such lot, piece or parcel of land so offered for sale, and shall issue a certificate therefor. If there be no bidder said property shall be struck off to the municipality.

Redeemable within one year.

55. All property sold shall be subject to redemption for one year by the payment of the amount of the assessment, penalty and costs and interest thereon at the rate of ten per cent per annum from the date of sale. The superintendent of streets shall, if there is no redemption, make and deliver to the purchaser at such sale, or his consignee, a deed conveying the property sold, and shall collect for each deed one dollar. The deed of the street superintendent, made after such sale, in case of failure to redeem, shall be prima facie evidence of the regularity of all proceedings hereunder and of title in the grantee.

Separate funds.

56. The superintendent of streets shall from time to time pay over to the city treasurer all moneys collected by him on account of any such assessments. The city treasurer shall, upon receipt thereof, place the same in a separate fund, designating each fund by the name of street, square, lane, alley, court, or place for the change of grade for which the assessment was made. Payments shall be made from said fund to the parties entitled thereto, upon warrants signed by the commissioners or a majority of them.

Notice of damages awarded.

57. When sufficient money is in the hands of the city treasurer, in the fund voted for the proposed work or improvement, to pay the total cost of damages, as well as for the cost of doing the work, and all other expenses connected therewith, it shall be the duty of the commissioners to notify the owner, possessor, or occupant of the premises damaged, and to whom damages have been awarded, that a warrant has been drawn for the payment of the same, which can be received at the office of such commissioners. Such notification may be made by depositing a notice, postage prepaid, in the postoffice, addressed to his last known place of residence. If, after the expiration of three days after the service or deposit of the notice in the postoffice, he shall not have applied for such warrant, the same shall be drawn and deposited with the city treasurer, to be delivered to him upon demand.

Condemnation proceedings.

58. If the owner of any premises damaged neglects or refuses, for ten days after the warrant has been placed in the hands of the city treasurer, subject to his demand, to accept the same, the city council may cause proceedings to be commenced, in the name of the city, to condemn said premises, as provided by law under the right of eminent domain. The resolution of intention shall be conclusive evidence of the necessity of the same. Such proceedings shall have precedence, so far as the business of the court will permit, and any judgment for damages therein rendered shall be payable out of a special fund in the treasury for that purpose. At any time after the trial and judgment entered, or pending appeal, the court may order the city treasurer to set apart in the city treasury a sufficient sum from said fund to answer the judgment, and thereupon may authorize or order the municipality to proceed with the proposed work or improvements. In case of a deficiency in said fund to pay the whole assessed judgment and damages, the city council may, in its discretion, order the balance thereof to be paid out of the general fund of the treasury, or to be distributed by the commissioners over the property assessed by a supplementary assessment; but in the last-named case, in order to avoid delay, the city council may advance such balance out of any available fund in the treasury.

and reimburse the same from the collection of assessments. The treasurer shall pay such warrants in the order of their presentation; provided, that warrants for damages and for costs of performing the work shall have priority over warrants for charges and expenses, and the treasurer shall see that sufficient money remains in the fund to pay all warrants of the first class before paying any of the second. The provisions of Section 1251 of the Code of Civil Procedure, requiring the payment of damages within thirty days after the entry of judgment, shall not apply to damages rendered in proceedings under this act. All provisions contained in Parts I and IV of this act, which provisions are not in conflict herewith, shall apply to all matters herein contained.

PART III.

Serial bonds may be issued.

59. The city council of any municipality in this state shall have the power, in its discretion, to determine that serial bonds shall be issued in the manner and form hereinafter provided to represent assessments of twenty-five dollars or over for the cost of any work or improvement authorized in Part I of this act.

Taxing power.

The power conferred upon the council by the Street Bond Act to impose a charge upon property owners for a period of ten years, is a proper exercise of the taxing power. *German Sav'gs & L. Society v. Ramish*, 138 Cal. 120.

Street Bond Act constitutional.

Because of its priority to all other liens the act is not unconstitutional as impairing the obligation of a prior mortgage, nor is it a violation of the fourteenth amendment to the federal constitution. *German Savings & Loan Society v. Ramish*, 138 Cal. 120.

When and where payable.

60. Said serial bonds shall extend over a period not to exceed nine years from the second day of January next succeeding their date, and an even annual proportion of the principal sum thereof shall be payable, by coupon, on the second day of January every year after their date, until the whole is paid, and the interest shall be payable semi-annually, by coupon, on the second days of January and July, respectively, of each year, at the rate of not to exceed ten per cent per annum on all sums unpaid, until the whole of said principal and interest are paid.

Said bonds and interest thereon shall be paid at the office of the city treasurer of said municipality, who shall keep a fund designated by the name of said bonds, into which he shall place all sums paid him for the principal of said bonds and the interest thereon, and from which he shall disburse such sums, upon the presentation of said coupons; and under no circumstances shall said bonds or the interest thereon be paid out of any other fund. Said city treasurer shall keep a register in his office, which shall show the series, number, date, amount, rate of interest, payee and indorsees of each bond, and the number and amount of each coupon of principal or interest paid by him and shall cancel and file each coupon so paid.

The owner of or any person interested in any lot or parcel of land upon which a bond has been issued under the terms of this act may at any time before commencement of proceedings for sale pay off such bond and discharge the land described in the bond from the lien of the assessment, by paying to the city treasurer, for the holder of such bond, the amount then unpaid on the principal sum thereof, all interest thereon which has accrued and is unpaid, and all penalties accrued and unpaid, together with the two semi-annual installments of interest which will next thereafter become due according to the terms of such bond. Upon such payment being made to the city treasurer he shall report the same to the street superintendent, who shall forthwith mark paid on the margin of the record of the assessment, the assessment to represent which such bond was issued, and thereupon the lien of said assessment shall cease and the city treasurer shall forthwith notify the holder of the bond and call in the same. The city treasurer shall enter in his record of such bond the amount paid and the date of payment, and upon the lien of the assessment being extinguished as aforesaid, shall cancel said bond and file it in his office. (As amended and in effect August 10, 1915.)

Notice in resolution of intention.

61. When said city council shall determine that serial bonds shall be issued to represent the expenses of any proposed work or improvement under this act, it shall so declare in the resolution of intention to do said work, and shall specify the rate of interest which they shall bear. The like description of said bonds shall be inserted in the resolution ordering the work, in the resolution of award, and in all notices of said proceedings required by this act to be either posted or published; and also a notice that a bond will issue to represent each assessment of twenty-five dollars or more remaining unpaid for thirty days after the date of the warrant, or five days after the decision of said council upon an appeal, shall be included in the warrant provided for in Section 22 of this act.

The resolution of intention need not state or fix the definite period for which the bonds are to run. But the time must be fixed before the warrant is issued. The council must fix the term of the bonds and no other person can legally do so. *Cohn v. Federal Const. Co.*, 171 Cal. 547. (Construing various street bond acts.)

Notification to treasurer.

62. After the full expiration of thirty days from the date of the warrant, or if an appeal be taken to the city council as provided in this act, then five days after the final decision of said council, and after the street superintendent shall have recorded the return, as provided in Section 25 hereof, the street superintendent shall make and certify to the city treasurer a complete list of all assessments unpaid, which amount to twenty-five dollars or over, upon any assessment, or diagram number; and said treasurer shall thereupon make out, sign, and issue to the con-

tractor, or his assigns, payee of the warrant and assessment, a separate bond, representing upon each lot or parcel of land upon said list the total amount of the assessment against the same, as thereon shown. And if said lot or parcel of land is described upon said assessment and diagram by its number or block, or both, and is also designated by its number or block, or both, upon the official map of said municipality, or upon any map on file in the office of the county recorder of the county in which said municipality is situated, then it shall be in said bond a sufficient description of said lot or parcel of land to designate it by said number or block, or both, as it appears on said official or recorded map.

Form of bond.

63. Said bond shall be substantially in the following form:

STREET IMPROVEMENT BOND.

Series (designating it), in the city (or other form of the municipality) of (naming it).

\$.....100 No.....

Under and by virtue of an act of the legislature of the State of California (title of this act), I, out of the fund for the above designated street improvement bonds, series....., will pay to....., or order, the sum of.....dollars (\$.....) with interest at the rate of.....per cent per annum, all as is hereinafter specified, and at the office of the.....treasurer of the.....of....., State of California.

This bond is issued to represent the cost of certain street work upon....., in the.....of....., as the same is more fully described in assessment number....., issued by the street superintendent of said....., after the acceptance of said work, and recorded in his office. Its amount is the amount assessed in said assessment against the lot or parcel of land numbered therein, and in the diagram attached thereto, as number....., and which now remains unpaid, but until paid, with accrued interest, is a first lien upon the property affected thereby, as the same is described herein, and in said recorded assessment with its diagram, to wit: the lot or parcel of land in said.....of....., county of....., State of California,

This bond is payable exclusively from said fund, and neither the municipality nor any officer thereof is to be holden for payment otherwise of its principal or interest. The term of this bond is.....years from the second day of January next succeeding its date, and at the expiration of said time the whole sum then unpaid shall be due and payable; but on the second day of January of each year after its date an even annual proportion of its whole amount is due and payable,

upon presentation of the coupon therefor, until the whole is paid, with all accrued interest at the rate of.....per centum per annum.

The interest is payable semi-annually, to wit: On the second days of January and of July in each year hereafter, upon presentation of the coupons therefor, the first of which is for the interest from date to the next second day of....., and thereafter the interest coupons are for semi-annual interest, except the last, which is for interest from the semi-annual payment next preceding and to the date of the final maturity of this bond.

This bond may be redeemed by the owner or any person interested in any lot or parcel of land described herein, in the manner provided in said act, at any time before maturity, and before commencement of proceedings for sale, upon payment to the city treasurer, for the holder of this bond, of the amount then unpaid on the principal sum thereof, all interest thereon which has accrued and is unpaid and all penalties accrued and unpaid, together with the two semi-annual installments of interest which will next thereafter become due according to the terms of said bond.

Should default be made in the annual payment upon the principal, or in any payment of interest from the owner of said lot or parcel of land, or anyone in his behalf, the holder of this bond is entitled to declare the whole unpaid amount to be due and payable, and to have said lot or parcel of land advertised and sold forthwith, in the manner provided by law.

At said.....of....., this..... day of....., in the year one thousand.....hundred and.....

City treasurer of the.....of.....

(As amended and in effect August 10, 1915.)

Conclusive evidence of regularity.

The provision making the bonds issued for street improvements conclusive evidence of the regularity of proceedings, is not intended to cure defects and irregularities which may be cured by the council on appeal, and is conclusive evidence only of all proceedings not jurisdictional in their nature. *Chase v. Trout*, 146 Cal. 350.

Limitation, twenty-five dollars.

64. In case the amount of unpaid assessments upon any lot or parcel of land shall be less than twenty-five dollars, then the same shall be collected as is hereinbefore provided in Part I of this act.

Owner may stop issuance.

65. If any person, or his authorized agent, shall at any time before the issuance of the bond for said assessment upon his lot or parcel of land present to the city treasurer his affidavit, made before a competent officer, that he is the owner of a lot or parcel of land in said list, accompanied by the certificate of a searcher of records that he is such owner of record, and with such affidavit and certificate such person notifies said treasurer in writing that he desires no bond to be issued

for the assessments upon said lot or parcel of land, then no such bond shall be issued therefor, and the payee of the warrant, or his assigns, shall retain his right for enforcing collection as if said lot or parcel of land had not been so listed by the street superintendent.

Description of bonds.

66. The bonds so issued by said treasurer shall be payable to the party to whom they issue, or order, and shall be serial bonds, as is hereinbefore described, and shall bear interest at the rate specified in the resolution of intention to do said work. They shall have annual coupons attached thereto, payable in annual order, on the second day of January in each year after the date of the bond, until all are paid, and each coupon shall be for an even annual proportion of the principal of the bond. They shall have semi-annual interest coupons thereto attached, the first of which shall be payable upon the second day of January or July, as the case may be, next after its date, and shall be for the interest accrued at that time, and the last of which shall be for the amount of interest accruing from the second day of January or July, as the case may be, next preceding the maturity of said bonds to the maturity thereof. The city treasurer shall, in addition to his other duties in the premises, keep a record of all bonds issued by him, of all payments on said bonds with the dates thereof and of all penalties accruing thereon; and he shall report all payments of coupons or penalties upon said bonds, with the dates thereof, to the street superintendent, who shall forthwith endorse the same upon the margin of the record of the assessment to the credit of which the same are paid, and said assessment shall be a first lien upon the property affected thereby until the bond issued for the payment thereof, and the accrued interest thereon and the penalties, if any, shall be fully paid according to the terms thereof. Said bonds, by their issuance, shall be conclusive evidence of the regularity of all proceedings thereto under this act. (As amended and in effect August 10, 1915.)

Conclusiveness of bond.

The provisions of the bond act, making the issuance of the bonds conclusive evidence of the validity of the lien is without the power of legislature and unavailing; but is conclusive evidence of all proceedings except those essential to acquiring jurisdiction. *Ramish v. Hartwell*, 126 Cal. 443; *Chase v. Trout*, 146 Cal. 350.

Priority between street liens.

Of two valid street assessment liens, the one latest in time is superior. The same rule applies as in liens for general taxes. *Woodhill Etc. Co. v. Young*, 58 Cal. Dec. 42, (July 5th, 1919).

Penalty for default.

67. In case any annual or semi-annual coupon, representing either principal or interest, is not paid at the office of the city treasurer within fifteen days after the same is due, immediately a penalty of ten per cent of the amount of such coupon shall be added thereto and to

the amount due on the bond to which it was or is attached, and shall be immediately due and payable.

Whenever payment on any such bond, either upon the principal, or of any interest, or of any penalty, is not made when the same is due, and the holder of the bond while any of the same remains unpaid demands, in writing, that the said city treasurer proceed to advertise and sell the land described in such bond as herein provided, then the whole bond or its unpaid remainder, with its accrued interest, as expressed in said bond, shall become due and payable immediately, and on the day following shall become delinquent. (As amended and in effect August 10, 1915.)

Sale of property.

68. Upon the application of the holder of any bond that is now or shall hereafter become delinquent as hereinbefore provided, the said city treasurer shall publish twice in a newspaper of general circulation, to be designated by him, published in the city where his office is situated, a notice of which must contain the date, number and series of the delinquent bond, a description of the property mentioned in said bond, the amount due thereon, and a statement that unless the amount of said bond and the interest due thereon, together with penalties and the cost of publication of such notice are paid, the real property described in said bond will be sold at public auction on a day to be therein fixed, which shall not be less than fifteen nor more than thirty days from the day of the first publication of said notice, and the place of such sale, which must be the office of the said city treasurer.

Like notice shall not less than fifteen days before the day of sale so fixed be deposited by the city treasurer in the post office at such city, addressed to the person to whom said property is assessed upon the last assessment roll of such city (or if the city has no assessment roll, upon the last assessment roll of the county in which such city is situated), at his address if known, and to all record lien holders, with the postage, thereon prepaid. When the addresses of such persons are unknown the notice shall be mailed to them at the city in which said property is located.

At any time prior to the sale, the owner or person in possession of any real estate offered for sale under the provisions of this act may pay the whole amount of said bond then due, with penalties and costs, and such bond shall thereupon be canceled; but in case such payment is not made by such owner, or person in possession, or by some one in his behalf of such owner or person in possession, the property subject thereto shall be sold at public auction to the bidder offering to pay the amount due on the bond with penalties and costs for the least portion of such lot or parcel of land offered for sale.

Sec. 2. Section seventy of said act is hereby amended to read as follows:

Sec. 70. The city treasurer must collect, in addition to the amount

due on such bond, the penalties hereinabove provided for and the cost of the publication of such notice, and one dollar, being for the certificate of sale delivered to the purchaser as hereinafter provided and for the cost of filing the duplicate thereof as hereinafter provided.

Sec. 3. Section seventy-two of said act is hereby amended to read as follows:

Sec. 72. Immediately on the sale, the purchaser shall become vested with a lien on the property so sold to him, for the amount of the purchase money, and is only divested of such lien by the payment to the city treasurer for the purchaser of the purchase money, and in addition thereto ten per cent thereon, with interest on said purchase money at one per cent per month from date of sale.

The city treasurer shall issue for each sale an original and a duplicate certificate of sale referring to the proceedings, describing the parcel sold and giving the name of the purchaser and the amount for which said parcel was sold and shall deliver the original certificate to the purchaser and shall file the duplicate in the office of the recorder of the county in which the land sold is situated.

A like notice shall not less than fifteen days before the day of sale so fixed be served upon any such owner if known, either personally or by depositing the same in the post office at such city, addressed to such owner at his address, if known, with the postage thereon prepaid.

At any time prior to the sale, the owner or person in possession of any real estate offered for sale under the provisions of this act may pay the whole amount of said bond then due, with costs, and such bond shall thereupon be canceled; but in case such payment is not made by such owner, or person in possession, or by some one in behalf of such owner, or person in possession, the property subject thereto shall be sold at public auction to the bidder offering to pay the amount due on the bond with costs for the least portion of such lot or parcel of land offered for sale.

Mandamus to compel sale under bond act.

Mandamus may lie at the suit of contractors to compel an advertisement and sale at auction of delinquent land and delinquent property under the provisions of the Bond Act. *Ramish v. Hartwell*, 126 Cal. 443.

Interest continues to date of sale.

The bond continues to bear interest after notice of delinquency and demand to sell has been made until the date of sale. *Chapman v. Jocelyn*, 57 Cal. Dec. 525. (Pending on rehearing.) Construing Bond Act, Stats. 1913, p. 849.

Amount due on bond.

Notice of sale by city treasurer must state principal and interest due to date of sale in order to correctly state the "amount due thereon." Otherwise sale is void. *Chapman v. Jocelyn*, *supra*, (construing Stats. 1913, p. 849).

Invalid notice of sale.

A notice of sale which states that the property will be sold for the amount of "unpaid principal and interest due on said bond, together with the costs of publication of this notice" is fatally defective in at least two respects. It should state the sale will be made to the person who will take the least portion of the property and pay the amount due on the bond, etc. It does not correctly state the terms of the sale, but query, what is a correct statement of terms. *Chapman v. Jocelyn*, 57 Cal. Dec. 525, (May 31, 1919). (Pending on rehearing.)

Treasurer's affidavit.

69. The city treasurer, before the day of sale hereinafter provided for, must file with the city clerk a copy of the publication, with an affidavit of the publisher of such newspaper, or someone in his behalf, attached thereto, that it is a true copy of the same; that the publication was made in a newspaper, stating its name and place of publication and the date of each appearance in which such publication was made, which affidavit is prima facie evidence of all the facts stated therein.

Costs and Fees.

The attempted amendment of August 10, 1915, is ineffective on account of its omission from the title. The old section, still in effect, reads as follows:

70. The city treasurer must collect, in addition to the amount due on such bond, the cost of the publication of such notice, and fifty cents for the certificate of sale delivered to the purchaser as hereinafter provided.

Certificate of treasurer.

71. The city treasurer, before delivering any certificate of sale must, in a book kept in his office for that purpose, enter the date, number and series of the bond, a description of the land sold corresponding with the description in the certificate, the date of sale, purchaser's name, the amount paid, regularly number the descriptions on the margin of the book, and put a corresponding number on each certificate. Such book must be open to public inspection during office hours when not in actual use, and he shall enter on the record of the bond the words "canceled by sale of the property," giving the date of such sale.

Lien on the Property.

The attempted amendment of August 10, 1915, is ineffective on account of its omission from the title. The old section, still in effect, reads as follows:

72. Immediately on the sale, the purchaser shall become vested with a lien on the property, so sold to him, to the extent of his bid, and is only divested of such lien by the payment to the city treasurer of the purchase money, including costs herein provided for, with interest thereon at the rate of one per cent per month from the date of sale.

Redemption.

73. A redemption of the property sold may be made by the owner of the property, or any party in interest, within twelve months from the date of purchase, or at any time prior to the application for a deed, as hereinafter provided. Redemption must be made in lawful money

of the United States, and when made to the city treasurer he must credit the amount paid to the person named in his certificate, and pay it on demand to him or his assignees.

Time of redemption.

Right of redemption continues indefinitely until purchaser makes proper application for a deed. *Warden v. Bittleson*, 28 Cal. App. Dec. 982, (April 28, 1919).

Recording certificate.

74. On receiving the duplicate certificate of sale, the recorder must file it and make an entry in a book similar to that required to be kept by the city treasurer, the fee for which shall be fifty cents. He shall also, when requested, without other charge, endorse the fact of filing the duplicate certificate on the original certificate. On redemption, the city treasurer shall issue his receipt for the total amount of the redemption money and shall file the same with the recorder, who must, without charge, mark the word "redeemed," the date, and by whom redeemed, on the margin of the book where the entry of the certificate is made. (As amended and in effect August 10, 1915.)

Deed to purchaser.

75. If the property is not redeemed within the time allowed by the provisions of section seventy-three hereof for its redemption, the city treasurer, or his successor in office, upon application of the purchaser or his assignee, must make to said purchaser, or his assignee, a deed to the property, reciting in the deed, substantially, the matter contained in the certificate and that no person has redeemed the property during the time allowed for its redemption; the treasurer shall be entitled to receive from the purchaser two dollars for making said deed, which shall be deposited in the city treasury for the use of the city after payment has been made therefrom for the acknowledgment of said deed; provided, however, that the purchaser of the property, or his assignee, or the agent, of either of them, must at least thirty days prior to the expiration of the time of redemption, or thirty days before his application for his deed, serve upon the owner of the property purchased, and upon the occupant of such property, if the same is occupied, a written notice stating that said property, or a portion thereof, has been sold to satisfy the bond lien, the date of sale, the date, number and series of the bond, the amount then due, and the time when the right of redemption will expire or when the purchaser, or his assignee, will apply for a deed, and the owner of the property shall have the right of redemption indefinitely until such notice shall have been given and said deed applied for, upon the payment of the fees, penalties and costs in this act required. Where said owner resides out of the state, or has departed from the state, or cannot after due diligence be found within the state, or conceals himself to avoid the service of said notice, or is a corporation having no managing or business agent, cashier, or secretary, or other officer upon whom summons may be

served according to law, who, after due diligence cannot be found within the state, and the fact appears by affidavit filed in the office of the city treasurer, service of said notice shall be made by publishing the same once a week for four successive weeks before the expiration of the time for redemption or before the application for a deed, in a newspaper of general circulation published in the county wherein said property is situated. In case of publication where the residence of a non-resident or absent owner is known, a copy of said notice shall, within three days after the first publication of the same, be deposited in the post office, directed to the person to be served, at his place of residence, postage thereon prepaid. Where the residence of said owner is unknown then a copy of said notice shall within three days after the first publication of the same be deposited in the post office directed to the person to be served at the city in which said property is located postage thereon prepaid. The owner of the property shall have the right of redemption indefinitely until notice shall have been given as herein provided and said deed applied for, upon the payment of the fees, penalties and costs in this act required. No deed to the property sold in accordance with the provisions of this act shall be issued by the city treasurer to the purchaser of such property, or his assignee, until there shall have been filed with such city treasurer an affidavit or affidavits showing that the notice hereinbefore required to be given has been given as herein required, which said affidavits shall be filed and preserved by the said treasurer as are other records kept by him in his office. The cost of publication of notice of delinquent sale and the cost of publication of notice of application for a deed shall each become a lien against the property at the time of the first publication thereof. The purchaser or his assignee shall be entitled to receive the sum of three dollars for his service of such notice and the making of the affidavit thereof, where the notice is served personally, and the cost of publication together with fifty cents for the affidavit of due diligence and fifty cents for the affidavit of publication where service is made by publication, all of which sums shall be paid by the redemptioner at the time and in the same manner as the other sums, costs and fees are paid. (As amended and in effect August 10, 1915.)

Notice, contents.

The notice required to be served on the owner and occupant must definitely state or fix the date when the purchaser will apply for a deed. One that states he will so apply on a certain date "or thereafter" is invalid. *Warden v. Bittleston*, 28 Cal. App. Dec. 982. Construing Stats. 1909, p. 1042.

Service on co-owners.

The purchaser must serve notices identical in contents on all co-owners. One tenant in common who desires to redeem must redeem for the whole amount the same as if he were the sole owner. *Warden v. Bittleston, supra*.

Absolute title.

76. The deed, when duly acknowledged or approved, is primary evidence of the regularity of all proceedings theretofore had and shall be conclusive evidence of all things of which the bond upon which it is

based is conclusive evidence, and prima facie evidence of the regularity of all proceedings subsequent to the issue of the bond, and conveys to the grantee the absolute title to the lands described therein, free of all encumbrances, except the lien for state, county and municipal taxes.

Deeds are prima evidence of regularity.

Empire Securities Co. v. Matthews, 56 Cal. Dec. 432, (Nov. 12, 1918).
Chapman v. Jocelyn, 57 Cal. Dec. 525, (May 31, 1919).

Railroad property.

77. Whenever any railroad track or tracks of any description exist upon the street or streets upon which the city council of any city has ordered an improvement to be made, and has excepted therefrom the portions used by the track, between the rails and for two feet on each side thereof, and between the tracks if there is more than one, the said order, unless said city council shall by resolution theretofore passed have declared to the contrary, shall be deemed to be and constitute a requirement that the person or company having said railroad track or tracks thereon shall improve the said portion with improvements similar in all respects to, with the same materials, under the same specifications and superintendence, and to the like inspection and satisfaction as those ordered to be performed by said order ordering the work; provided, however, that the city council may by ordinance require increased depth of concrete between, to the full depth of, or under the ties, or both, where and whenever the city council shall, in its judgment decide that this method of construction is necessary. The city council may also require by ordinance or otherwise, any person or company aforesaid, to pave alongside of and contiguous to its rails with special types of brick or paving blocks. The resolution of intention and notice of proposed improvement shall be construed and are hereby declared to be notice to said person or company of the intention to order the same. Thereupon it shall be the duty of said person or company, having such track or tracks on such street or streets to notify in writing the superintendent of streets if such person or company elects to enter upon the direct performance of such work at its own charge and expense; said notice must be delivered to the superintendent of streets within ten days after the first publication of notice of award of contract. The omission or neglect to make such election shall be construed as constituting the superintendent of streets the agent of the owner of said track or tracks, with authority to enter into a contract made in accordance with the provisions of this section for making the said improvements. Said superintendent of streets shall advertise for bids for the improvement of said portions of the street or streets lying between the rails and for two feet on each side thereof, and between the tracks, if there be more than one. It shall be the duty of said city council to award the contract for the making of said improvements to the lowest regular responsible bidder. Such bidding and awarding of contracts shall be made in the same manner

hereinbefore provided for the awarding of contracts for improvements excepting that no notice of award shall be published. Immediately upon the award, the superintendent of streets shall enter into a contract with the person to whom said contract was awarded for the making of said improvement or improvements upon the portions of the street or streets described in said notice inviting bids, and at the price stated in said bid. The contractor shall execute bonds in the manner required by Section 15 of this act. Upon the completion of the work and its acceptance, the street superintendent shall make a certificate of such completion, together with a statement of the amount due under the terms of said contract for the performance of said work. Such certificate shall be countersigned by the mayor of said city, and shall be recorded in the office of said superintendent of streets. The contractor thereupon shall be entitled to payment of the full amount of said contract price, and the recording of such certificate shall be sufficient notice to the owner of such track or tracks that said contract price is due and payable. In the event that such amount is not paid within thirty days from the date of the recording of said certificate, the contractor may file a sworn statement to that effect with the superintendent of streets, who shall record the same in his office in the book in which the certificate of acceptance has been recorded. Said contractor shall thereupon have a cause of action against said person or company owning said tracks for the amount of said contract, together with a reasonable attorney's fee, and shall also have as a security for the recovery of such amount, a first lien upon the track and franchises of said railroad, between whose rails or tracks the said work has been performed, contained within the corporate limits of the said city. In such suit, the certificate of the superintendent of streets, hereinbefore mentioned, shall be and constitute prima facie evidence of the regularity of all proceedings, and of the right of the contractor to recover judgment against said person or company. Execution may be taken out upon the entry of judgment, and levied upon any property of said person or company subject to execution. In the event that said person or company shall file the written election to enter upon the direct performance of such work at its own cost and expense, no further proceedings shall be taken in the matter unless such person or company neglects or fails for thirty days, or for such further time as the city council may grant, to make said improvement. In the event that the improvement of the portions of the street or streets above described between the rails and for two feet on each side thereof, and between the tracks, if there be more than one, shall not be made with diligence, as herein provided or in all respects similar to the improvement of the rest of the street, or with the same materials or under the same specifications, and to the satisfaction of the superintendent of streets, the city council of said city may, by resolution entered in its minutes, prescribe such terms and conditions as to it may seem fit and proper before permitting the said person or company to continue with

the said improvement. If the said person or company shall, after three days' notice of the adoption of said resolution, fail to comply with the terms and conditions so prescribed, the city council may declare said person or company to have forfeited its privilege of performing such work under its own direction. Whereupon the street superintendent shall advertise for bids for the performance of such work, or such portion thereof as may remain uncompleted, and the contract therefor shall be awarded and entered into in the same manner hereinbefore provided for the awarding and execution of contracts where said person or company has not elected to make the improvements under its own direction; and upon the completion of the improvement, the contractor to whom such contract may be awarded, or his assigns, shall be entitled to a certificate from the street superintendent similar to that hereinabove provided for, and shall have the right to collect from said person or company by suit the amount specified in said certificate in all respects the same as hereinbefore provided where the contract is let for such improvement in the first instance. The city council may, by ordinance, prescribe and enforce such additional regulations and penalties as it may deem necessary to compel the improvement as herein provided of any portion or portions of any such street or streets so occupied by any such railroad track or tracks.

Improvements by railroad companies.

77a. Whenever any railroad track or tracks of any description exist upon any street in any city which has been paved, macadamized, graveled, capped, or oiled either for the whole or any portion of the width of the roadway thereof along or near the line of such railroad track or tracks, and the roadbed thereof has not been improved similar in all respects to and with the same materials as such street along the line of such track or tracks; or where any portion of such roadbed, whether so improved or not is out of repair or is not on the official grade of such street or has small hummocks or ridges or loose rock upon or along such roadbed or the materials composing such roadbed next to the rails of such track or tracks are not flush with the top of such rails or the sides thereof, the city council of any city may, by resolution, require and order the person or company having or owning such railroad track or tracks to improve the roadbed thereof by making repairs or by bringing the roadbed to the official grade or removing the hummocks or ridges or loose rock upon or along such roadbed or making the roadbed and the materials thereof flush with the top or sides of the rails of such track or tracks. Such city council may require and order any or all of said work or improvement as may be designated in such resolution and to be done in the manner therein designated.

The city council may also require, by resolution, any person or company aforesaid to pave alongside of and contiguous to its rails with special type of brick or paving blocks or other material.

The resolution to require and order said work or improvement shall be personally served upon the person or company having or owning such railroad track or tracks, or service thereof may be made upon any agent or representative of such person or company or any officer of such company, and upon such service being made, such resolution shall be construed and is hereby declared to be notice to said person or company of the intention to order the work or improvement as designated in such resolution.

Thereupon, it shall be the duty of said person or company to notify, in writing, the superintendent of streets of the city where such work or improvement is to be done, if such person or company elects to enter upon the direct performance of such work or improvement at his or its own charge or expense. Said notice must be delivered to the said superintendent of streets within ten days after the service of such resolution as aforesaid.

The omission or neglect to make such election by delivering such notice shall be construed as constituting the superintendent of streets the agent of the owner of said track or tracks with authority to enter into a contract made in accordance with the provisions of this section for doing said work and making said improvements.

Said superintendent of streets shall thereupon be vested with authority to and he shall advertise for bids for said work or improvement for at least two days in some newspaper published and circulated in such city, and fix the time in such notice for receiving bids not less than five days from the first publication thereof.

It shall be the duty of such city council to award the contract for doing said work or making said improvements to the lowest regular, responsible bidder.

All bids offered shall be accompanied by a check or by a bond and shall be delivered, opened and award of contract made, all as provided by Section 10 of said act, except that no notice of award shall be published.

Upon the award being made, the superintendent of streets shall enter into a contract with the person to whom said contract was awarded for doing said work or making said improvement described in said notice inviting bids, and at the price stated in said bid.

The contractor shall execute bonds in the manner required by Section 15 of said act. Upon the completion of the work and its acceptance, the street superintendent shall make a certificate of such completion, together with a statement of the amount due under the terms of said contract for the performance of said work. Such certificate shall be countersigned by the mayor of said city, and shall be recorded in the office of said superintendent of streets. The contractor thereupon shall be entitled to payment for the full amount of said contract price, and the recording of such certificate shall be sufficient notice to the owner of such track or tracks that said contract is due and payable. In the event that such amount is not paid within thirty days from the

date of the recording of said certificate, the contractor may file a sworn statement to that effect with the superintendent of streets, who shall record the same in his office in the book in which the certificate of acceptance has been recorded. Said contractor shall thereupon have a cause of action against said person or company owning said tracks for the amount of said contract, together with a reasonable attorney's fee, to be fixed by the court, and shall also have as a security for the recovery of such amount, a first lien upon the track and franchises of said railroad contained within the corporate limits of the said city. In such suit, the certificate of the superintendent of streets, hereinbefore mentioned, shall be and constitute prima facie evidence of the regularity of all proceedings, and of the right of the contractor to recover judgment against said person or company. Execution may be taken out upon the entry of judgment, and levied upon any property of said person or company subject to execution. In the event that said person or company shall file the written election to enter upon the direct performance of such work at its own cost and expense, no further proceedings shall be taken in the matter unless such person or company neglects or fails for thirty days, or for such further time as the city council may, by resolution, grant, to make and complete said work or improvement.

In the event that the said work or improvement shall not be made with diligence as herein provided, the city council of said city may, by resolution entered upon its minutes, prescribe such terms and conditions as to it may seem fit and proper before permitting the said person or company to continue with the said improvement. If the said person or company shall, after three days' notice of the adoption of said resolution, fail to comply with the terms and conditions so prescribed, the city council may, at any time thereafter, declare said person or company to have forfeited its privilege of performing such work or improvement under its own direction. Whereupon the street superintendent shall advertise for bids for the performance of such work, or such portion thereof as may remain uncompleted, and the contract therefor shall be awarded and entered into in the same manner hereinbefore provided for the awarding and execution of contracts where said person or company has not elected to make the improvements under its own direction; and upon the completion of the improvement, the contractor to whom such contract may be awarded, or his assigns, shall be entitled to a certificate from the street superintendent similar to that hereinabove provided for, and shall have the right to collect from said person or company by suit the amount specified in said certificate in all respects the same as hereinbefore provided where the contract is let for such work or improvement in the first instance. The city council may, by ordinance, prescribe and enforce such additional regulations and penalties as it may deem necessary to compel the work or improvement as herein provided of any portion or portions of any

such street or streets so occupied by any such railroad track or tracks.

The word "roadbed" herein used shall be deemed to embrace that portion of any street used by the track of any railroad between the rails and for two feet on each side thereof and between the tracks if there is more than one, including the rails of such track or tracks. (New section, approved June 10, 1913, Stats. 1913, p. 540. In effect August 10, 1913.)

No protests.

78. None of the provisions of Part I of this act in regard to a protest against the work shall apply to any work contemplated by the preceding section. All provisions of Part I of this act not inconsistent with the provisions hereof shall apply hereto.

PART IV.

Definitions.

79. First. The person owning the fee, or the person in whom, on the day the action is commenced, appears the legal title to the lots and lands, by deeds duly recorded in the county recorder's office of each county, or the person in possession of land, lots, or portions of lots or buildings under claim, or exercising acts of ownership over the same for himself, or as the executor, administrator, or guardian of the owner, shall be regarded, treated, and deemed to be the "owner" (for the purpose of this law), according to the intent and meaning of that word as used in this act. And in case of property leased, the possession of the tenant or lessee holding and occupying under such persons shall be deemed to be the possession of such owner.

Second. The words "work," "improve," "improved," and "improvement," as used in this act, shall include all work mentioned in this act, and also the construction, reconstruction and repairs, of all or any portion of said work.

Third. The term "incidental expenses," as used in this act, shall include the compensation of the city engineer for work done by him; also, the cost of printing and advertising as provided in this act; also, the compensation of the person appointed by the superintendent of streets to take charge of and superintend any of the work mentioned in this act; also the expenses of making the assessment for any work authorized by this act. All demands for incidental expenses mentioned in this subdivision shall be presented to the street superintendent by itemized bill, duly verified by oath of the demandant.

Fourth. The notices, resolutions, orders or other matter required to be published by the provisions of this act, shall be published in a daily newspaper, in cities where such there is, and where there is no daily newspaper, in a semi-weekly or weekly newspaper, to be designated by the council of such city, as often as the same is issued, and no other statute shall govern or be applicable to the publications

herein provided for, provided, however, that in case there is no daily, semi-weekly or weekly newspaper printed and circulated in any such city, then such notices, resolutions, orders or other matters as are herein required to be published in a newspaper, shall be posted and kept posted for the same length of time as required herein for the publication of the same in a daily, semi-weekly or weekly newspaper, in three of the most public places in such city except where herein otherwise specifically provided. Proof of the publication of posting of any notice provided for herein shall be made by affidavit of the owner, publisher, printer or clerk of the newspaper, or of the poster of the notice. No publication, or notice, other than that provided for in this act, shall be necessary to give validity to any of the proceedings provided for therein. The word "twice" as used in this act, referring to the number of times notices, resolutions or other matters shall be published, shall be held to mean the publication of the same in two entire issues of a newspaper, one being on one day and the other issue being on a subsequent day of the same or a subsequent week.

Fifth. The word "municipality" and the word "city," as used in this act, shall be understood and so construed as to include, and is hereby declared to include, all corporations heretofore organized and now existing, and those hereafter organized, for municipal purposes.

Sixth. The words "paved," or "repaved," as used in this act, shall be held to mean and include pavement of stone, whether paving blocks or macadamizing, or of bituminous rock or asphalt, or of iron, wood or other material, whether patented or not, which the city council shall by ordinance or resolution adopt.

Seventh. The word "street," as used in this act, shall be deemed to, and is hereby declared to, include avenues, highways, lanes, alleys, crossings, or intersections, courts and places, which have been dedicated and accepted according to law or in common and undisputed use by the public for a period of not less than five years next preceding, and the term "main street" means such actually opened street or streets as bound a block; and the word "blocks," whether regular or irregular, shall mean such blocks as are bounded by main streets, or partially by a boundary line of the city.

Eighth. The terms "street superintendent" and "superintendent of streets," as used in this act, shall be understood and so construed as to include, and are hereby declared to include, any person or officer whose duty it is, under the law, to have the care or charge of the streets, or the improvement thereof in any city. In all those cities where there is no street superintendent or superintendent of streets, the city council thereof is hereby authorized and empowered to appoint a suitable person to discharge the duties herein laid down as those of street superintendent or superintendent of streets; and all provisions hereof applicable to the street superintendent or superintendent of streets shall apply to such person so appointed.

Ninth. The term "city council" is hereby declared to include any

body or board which, under the law, is the legislative department of the government of any city.

Tenth. In municipalities in which there is no mayor, then the duties imposed upon said officer by the provisions of this act shall be performed by the president of the board of trustees, or other chief executive officer of the municipality.

Eleventh. The terms "clerk" and "city clerk," as used in this act, are hereby declared to include any person or officer who shall be clerk of the said city council.

Twelfth. The term "quarter block," as used in this act, as to irregular blocks, shall be deemed to include all lots or portions of lots having any frontage on either intersecting streets half way from such intersection to the next main street, or, where no main street intervenes, all the way to a boundary line of the city.

Thirteenth. The term "city treasurer" as used in this act shall be held to mean and include any person who, under whatever name or title, is the custodian of the funds of the municipality.

"Places" defined.

79a. The word "places" as used in this act, shall be deemed to, and is hereby declared to include any public pleasure ground and common which has been dedicated and accepted according to law, and this act shall include the improvement of a public pleasure ground and common. (New section approved April 22, 1913, Stats. 1913, p. 57, in effect August 10, 1913.)

Hearings.

80. Whenever in proceedings hereunder, a time and place for hearing by the city council is fixed, and, from any cause, the hearing is not then and there held or regularly adjourned to a time and place fixed, the power of the city council in the premises shall not thereby be divested or lost, but the city council may proceed anew to fix a time and place for the hearing, and cause notice thereof to be given by publication by at least one insertion in a daily, semi-weekly or weekly newspaper, such publication to be at least five days before the date of the hearing, and thereupon the city council shall have power to act as in the first instance.

Publication and posting.

81. Whenever any resolution, order, notice, or determination is required to be published or posted, and the duty of posting or procuring the publication or posting of the same is not specifically enjoined upon any officer of the city, it shall be the duty of the city clerk to post or procure the publication or posting thereof, as the case may be. No proceeding or step herein shall be invalidated or affected by any error or mistake or departure herefrom as to the officer or person posting, or procuring the publication or posting, of any resolution, notice,

order or determination hereunder when the same is actually published or posted for the time herein required.

Construction of act.

82. This act shall be liberally construed to the end that its purposes may be effective. No error, irregularity, informality, and no neglect or omission of any officer of the city, in any procedure taken hereunder, which does not directly affect the jurisdiction of the city council to order the improvement, shall avoid or invalidate such proceeding or any assessment for the cost of work done thereunder. The exclusive remedy of any person affected or aggrieved thereby shall be by appeal to the city council as herein provided.

Saving clause.

83. This act shall in no wise affect an act entitled "An act to provide for work upon streets, lanes, alleys, courts, places and sidewalks, and for the construction of sewers within municipalities," approved March 18, 1885; or an act entitled "An act to provide a system of street improvement bonds to represent certain assessments for the cost of street work and improvement within municipalities, and also for payment of said bonds," approved February 27, 1893; or an act entitled "An act to provide for local improvements upon streets, lanes, alleys, courts, places and sidewalks, and for the construction of sewers within municipalities, such act to be known as the 'Local Improvement Act of 1901'," which became a law February 26, 1901, or an act entitled "An act to provide for the improvement of public streets, lanes, alleys, courts, and places in municipalities, in cases where any damage to private property would result from such improvement, and for the assessment of the costs, damages and expenses thereof upon the property benefited thereby," which became a law April 21, 1909, or amendments to any of said acts, or any other acts on the same subject, or apply to proceedings had thereunder, but is intended to and does provide an alternate system for making the improvements provided for by this act; and it shall be in the discretion of the legislative body of any city to proceed, under the provisions either of this act or of such other acts; but when any proceedings are commenced under this act, the provisions of this act, and of such amendments thereof as may be hereafter adopted, and no other, shall apply to all such proceedings, and any provisions contained in said acts or any acts in conflict herewith shall be void and of no effect as to the proceedings commenced under this act. This act may be designated and referred to as the "Improvement Act of 1911," and shall take effect and be in force on its passage and approval.

Sections 84, 85, 86, 87, 88 and 89, relating to the doing of work in unincorporated territory. Repealed (effectual August 10, 1915).

IMPROVEMENT BOND ACT OF 1915

An act to provide for the issuance of improvement bonds to represent and be secured by certain assessments made for the cost of certain work and improvements made in and upon streets, avenues, lanes, alleys, courts, places and sidewalks within municipalities and upon property and rights of way owned by municipalities, to provide for the collection of such assessments, the sale of the property affected thereby and for the payment of the bonds so issued.

(Approved June 11, 1915, Stats. 1915, p. 1441. Amended May 4, 1917, Stats. 1917, p. 209.)

The people of the State of California do enact as follows:

Serial bonds may issue.

Section 1. The city council of any municipality in this state shall have power in its discretion, to determine that serial bonds shall be issued in the manner and form hereinafter provided to represent and be secured by the assessments which shall be made to pay for the cost of any work or improvement which shall be made in any one or more of the streets, avenues, lanes, alleys, courts, places or public ways of any such city, or in, over or through any property or rights of way owned by such city, which work and improvement shall include any and all work and improvements, the doing of which is provided for in the street work acts hereinafter referred to.

Street work acts affected.

Sec. 2. Whenever in this act the phrase "street work act" is used, it means and shall be taken to mean "An act to provide for work upon streets, lanes, alleys, courts, places and sidewalks and for the construction of sewers within municipalities," approved March 18th, 1885, and all acts amendatory thereof or supplementary thereto, and also the act entitled "An act to provide for work in and upon streets, avenues, lanes, alleys, courts, places and sidewalks within municipalities, and upon property and rights of way owned by municipalities, and for establishing and changing the grades of any such streets, avenues, lanes, alleys, courts, places and sidewalks, and providing for the issuance and payment of street improvement bonds to represent certain assessments for the cost thereof and providing a method for the payment of such bonds," approved April 7th, 1911, and designated "improvement act of 1911," and all acts amendatory thereof or supplementary thereto, and also any and all other acts for the doing of work and making of other improvements within municipalities whereby the cost

of the whole or any portion of such work or improvements is charged and assessed upon real property; and for any proceeding instituted under either of said acts shall be held to apply exclusively to the act under which any such proceeding was instituted.

Bonds when and where payable.

Sec. 3. Said bonds shall be issued in series and an even annual proportion of the aggregate principal sum thereof shall be payable on the second day of July every year, succeeding the first nine months after their date, until the whole is paid, and the said bonds shall bear interest at a rate of not to exceed eight per cent per annum from the date of filing with the clerk of the street superintendent's list of unpaid assessments, on all sums unpaid, until the whole of said principal sum and interest are paid, which interest shall be payable semi-annually by coupon, on the second days of January and July, respectively of each year; provided, that the first payment of interest shall not come due till six months before the maturity of the first series of bonds. The final series or installment of said bonds shall mature and be payable on a date which shall not exceed fourteen years from the second day of July next succeeding nine months from their date. Said bonds and interest shall be paid at the office of the city treasurer of said municipality who shall keep a redemption fund designated by the name of said bonds, into which he shall place all sums received by him from the collection of the assessments made for the payment of the cost of the work or improvements upon which the said bonds are issued, and of the interest and penalties thereon and from which fund he shall disburse and pay the said bonds and the interest due thereon upon presentation of the proper bonds and coupons; and under no circumstances shall said bonds or the interest thereon be paid out of any other fund. Said city treasurer shall keep a register in his office which shall show the series, number, date, amount, rate of interest, and last known holder of each bond, and the number and amount of each coupon of interest paid by him, and shall cancel and file each bond and coupon so paid. (Amended May 4, 1917.)

Declaration in resolutions and notices.

Sec. 4. When said city council shall determine that serial bonds shall be issued hereunder to represent the expense of any proposed work or improvement under said street work act it shall so declare in the resolution of intention to do said work and shall specify the rate of interest which they shall bear. The like description of said bonds shall be inserted in the resolution ordering the work, in the resolution of award and in all notices of said proceedings required by said act to be either posted or published, and also a like notice shall be entered in any warrant issued by the superintendent of streets to the contractor. Said bond declaration may be substantially in the following form: "Notice is hereby given that serial bonds to represent unpaid assess-

ments, and bear interest at the rate of.....per cent per annum, will be issued hereunder in the manner provided by the improvement bond act of 1915, the last installment of which bonds shall matureyears from the second day of July next succeeding nine months from their date." (Amended May 4, 1917.)

Issuance of bonds.

Sec. 5. After the full expiration of thirty (30) days from the date of the warrant, or if an appeal be taken to the city council as provided in said street work act, then five (5) days after the final decision of said council, and after the street superintendent shall have recorded the return, the street superintendent shall make and file with the clerk of the city council a complete list of all assessments unpaid, upon any assessment or diagram number. Said clerk shall then give notice of the filing of said list and of a time, to be therein fixed by said clerk, when interested persons may appear before the city council and show cause why bonds should not be issued upon the security of the unpaid assessments shown on said list, (which time shall be that of some regular meeting of said council.) Such notice shall be posted for not less than five days on or near the council chamber door and be published twice in a newspaper published in such city, if there be any, the first of which publications shall be not less than five days before the time fixed for such hearing. Reference shall therein be made to the resolution of intention and the date of its passage for a description of the work therein mentioned and no other description thereof shall be necessary. The council shall hear any objection presented and shall pass upon the same and shall thereupon determine the assessments which are unpaid and the aggregate amount of same. It may adjourn the hearing from time to time. Its decision shall be final. The city council shall then prescribe the denominations of such bonds, which shall be in convenient amounts not necessarily equal, and shall provide for issuance of same in annual series. Said bonds must be sold at a time to be fixed by the council, and to the highest bidder therefor, but for not less than par and accrued interest, and the proceeds of the sale shall be deposited in the city treasury. Before selling said bonds, or any part thereof, the city council must advertise for bids therefor, by publication once a week for at least two weeks in some newspaper of general circulation published in the city, or if there is no such newspaper published in the city then by notice of sale, posted for at least two weeks on or near the council chamber door of said city. If satisfactory bids are received the bonds offered for sale must be awarded to the highest bidder. . If no such bids are received or the council determines that the bids received are not satisfactory as to price or responsibility of the bidders the council may reject all bids received, if any, and either re-advertise or deliver said bonds to the contractor in satisfaction of the sum due him upon his assessment and warrant. From the proceeds of any sale of said bonds, there shall be paid to

such contractor the balance due him upon his assessment and warrant including interest upon the principal amount thereof at the rate specified in said bond declaration computed from the date of filing of said unpaid assessment list, and the surplus of such proceeds shall be credited to the redemption fund for the payment of such bonds. The cost of such publications shall be paid from such redemption fund. (Amended May 4, 1917.)

Form of Bond.

Sec. 6. Said bonds shall each be substantially in the following form:

Improvement Bond.

City (or other form of municipality) of
(naming it)

\$..... No.....

Under and by virtue of the act of the legislature of the State of California, entitled (title of this act) the..... of..... (a municipal corporation) will on the second day of July, 19....., out of the redemption fund for the payment of the bonds issued upon the assessments made for the work upon and improvements on certain streets (or on..... street, or in improvement district No....., or on certain rights of way owned by, or by other suitable description), more fully described in the certain resolution of intention passed by the city council (or other board) of said municipality on the..... day of....., 19....., pay to bearer, the sum of..... dollars (\$.....), with interest thereon from the..... day of....., 19....., at the rate of..... per cent per annum, all as is hereinafter specified, and at the office of the treasurer of said municipality.

This bond is one of several annual series of bonds of like date, tenor and effect, but differing in amounts and maturities, issued by said municipality under said act for the purpose of providing means for paying for the work and improvements described in said resolution of intention, and is secured by the moneys in said redemption fund and by the unpaid assessments made for the payment of said work, and, including principal and interest, is payable exclusively out of said fund.

The interest is payable semiannually, to wit: On the second days of January and July in each year hereafter, upon presentation of the proper coupons therefor; provided, that the first of said coupons is for the interest to the second day of January, 19....., and thereafter the interest coupons are for the semiannual interest.

This bond will continue to bear interest after maturity at the rate above stated; provided, it is presented at maturity and payment thereof is refused upon the sole ground that there is not sufficient moneys in said redemption fund with which to pay same. If it is not presented at maturity interest thereon will run until maturity.

This bond may be redeemed and paid in advance of maturity upon the second day of July in any year by giving the notice provided in said act.

In witness whereof, said.....of.....
.....has caused this bond to be signed by the
treasurer of said.....and by its clerk and has
caused its clerk to affix thereto its corporate seal all on the.....
day of....., 19.....

.....
Treasurer.

.....
Clerk.

(Seal)

(Amended May 4, 1917.)

Coupons.

Sec. 7. The coupons affixed to said bonds shall be signed by the treasurer, and the city council may by order provide in its discretion for the use upon said coupons of an engraved, printed or lithographed signature of the treasurer in place of a signature by hand. The bonds shall have semiannual coupons attached thereto, the first of which shall be payable upon the second day of January next before the maturity of the first series of bonds coming due, and shall be for the interest accrued at that time. (Amended May 4, 1917.)

Annual series.

Sec. 8. The bonds so issued shall be payable to the party to whom they issue, or bearer, and shall be issued in series, as is hereinbefore described, and shall bear interest at the rate specified in the resolution of intention to do said work. The bonds maturing in any year shall constitute the annual series of that year and the aggregate principal of the bonds in such series shall equal the even annual proportion of the aggregate principal sum of the entire bond issue hereinbefore referred to. Said bonds, by their issuance, shall be conclusive evidence of the regularity of all proceedings had prior thereto under this act and under said street work act.

Advanced maturity.

Sec. 9. The city treasurer may advance the maturity of any bond and pay and cancel the same whenever there shall be surplus moneys in the redemption fund with which to pay same, by giving notice of such redemption at least nine months prior to the second day of July in any year. Such notice may be given in writing, personally or by registered mail to the holder or owner thereof, or by publication once a week for two weeks in a daily or weekly newspaper published in said city; provided, that if such notice be so given by publication then a copy of same shall be mailed to the last known holder or owner

thereof at his last known address at least nine months prior to the next second day of July specified in said notice. In the event of such notice being given, the maturity of such bond shall be advanced and said bond be deemed to mature on the second day of July specified in the notice as the date on which it will mature, at which time the same shall be paid; provided, however, that the holder or owner of such bond may prior thereto surrender same and receive the principal thereof together with the interest thereon which would accrue on the second day of July specified in said notice. On said second day of July, if said bond has not been sooner surrendered, the treasurer shall set aside to the credit of the holder or owner of said bond the amount of principal and accrued interest then due on same, and said bond shall then be deemed to have matured, and interest shall thereafter cease to accrue on said bond. The amount so set aside shall on demand be paid the holder or owner of said bond on surrender and cancellation of same. The costs of such advertising shall be paid from said redemption fund.

Registration of bonds.

Sec. 10. Said bonds may be surrendered by the holder to the treasurer for registration in accordance with the provisions of any law applicable to the registration of the municipal bonds of the city, and thereafter the principal and interest thereon shall be paid to the proper registered owner thereof.

Unpaid assessments a trust fund.

Sec. 11. In the event of such bonds being so issued, then the assessments, which shall be unpaid, as shown on the list filed by the superintendent of streets and determined by the city council, together with interest thereon, shall remain and constitute a trust fund for the redemption and payment of said bonds and of the interest which may be due thereon. In the event of non-payment of any assessment or installment thereof, or of any interest thereon, and as a cumulative remedy, the same when due as hereinafter provided, may by order of the council be collected by suit brought to foreclose the lien thereof in the same manner as provided in said street work act for the foreclosure of other assessments by action in a superior court, and with like costs, attorneys' fees and other relief. Such assessments and each installment thereof and the interest and penalties thereon shall be and shall continue to constitute a lien against the lots and parcels of land on which made, until the same be paid, but for a period not exceeding the time within which an action might be brought on the last series of bonds issued upon the security of such unpaid assessments. Such lien shall be prior and superior to all other liens, except the lien for other state, county and municipal taxes; provided, however, that unmatured installments, interest and penalties shall not be deemed to be within the terms of any general covenant or warranty.

Assessments payable in installments.

Sec. 12. Such unpaid assessments shall be payable in annual series, corresponding in number to the number of series of bonds issued and an even annual proportion of each assessment shall be payable in each year preceding the date of maturity of each of the several series of bonds so issued. Such annual proportion of each assessment coming due in any year, together with the annual interest on such assessment, shall in turn be payable in annual or semiannual installments according as the general municipal taxes of such city on real property are payable in annual or semiannual installments, and such installments and said annual interest shall be payable and become delinquent at the same times and in the same proportionate amounts and bear the same proportionate penalties and interest after delinquency as do the general municipal taxes on real property of said city. Upon default in payment, the lands securing such installments and assessments shall be sold in the same manner in which real property in such city is sold, for the nonpayment of general municipal taxes, and be subject to redemption in the same manner as such real property is redeemed from such delinquent sale, and upon failure of redemption shall in like manner pass to the purchaser. The city may be the purchaser at any delinquent sale in like manner in which it becomes or may become the purchaser of property sold for nonpayment of the general municipal property tax, and in the event of its so becoming the purchaser shall pay and transfer into said redemption fund the amount of the delinquent assessment and of the delinquent interest thereon upon which said sale is made. In cases where the municipal property tax is collected by county or city and county officials and sales for nonpayment of such taxes are made to the state, the state shall be the purchaser at any such sale hereunder, but shall hold the title acquired at such sale upon behalf of the city and shall account to the city for any moneys received upon redemption or from the sale of such property, the city for the purposes of this act being deemed the real purchaser. In other cases where under the law, the city is not always the purchaser at sales for delinquent municipal taxes, the city shall become such purchaser at any delinquent sale hereunder where there is no other purchaser. In the event of there being no available funds in the treasury with which to make such payment, the tax collector shall delay the entry of the certificate of sale until such funds are available, making demand in the meantime upon the city council that a suitable amount be included in the next tax levy for the purpose of providing funds with which to make such payment; provided, however, that the period of redemption from such tax sale shall not be extended thereby nor the rights or privileges of the property owner be thereby in any wise affected. In the event of such purchase being made by the city and of any succeeding installment of such assessment or of such interest not being paid in any future year, the property shall not be sold unless there has previously been a redemption from such sale or unless under the law it is being

then sold for delinquent taxes. The city shall nevertheless from time to time when due pay and transfer into said redemption fund the amount of any such future delinquent assessment and interest pending redemption, and no redemption shall be made until any such subsequent payments, with interest and penalties, shall also be paid. (Amended May 4, 1917.)

Interest on assessments.

Sec. 13. Interest on all unpaid assessments shall run from the return of the warrant and assessment, and be computed at the same rate specified in the bonds secured by such assessments. Such interest shall be payable annually or semiannually as above provided, according as such general municipal taxes on real property in such city are payable annually or semiannually, but shall in each year be computed and collected up to the next second day of July succeeding, no deduction being made by reason of any installment of such assessment being due or paid prior thereto in such year.

Entered on assessment roll.

Sec. 14. The superintendent of streets shall make and certify to the city auditor, or other person authorized to apportion upon the assessment rolls taxes levied in such city for general municipal purposes, a complete list of all such unpaid assessments, which list shall contain such description of each lot or parcel of land assessed as will enable such auditor or other person to identify it, and the amount and date of the assessment thereon. The auditor shall thereupon enter in his assessment roll on which taxes will next become due, opposite each lot or parcel of land affected in a space marked "public improvement assessment," or by other suitable designation, the several installments of such assessment coming due during the fiscal year covered by such assessment roll, including in each case the interest due on such total unpaid assessments as herein provided. Taxpayers shall have the like right to pay such assessment as so entered under protest as they have to pay general municipal taxes under protest, but in making such payment under protest must accompany the payment with their written protest. In the event of the lot or parcel of land affected by any assessment not being separately assessed on said roll so that the installment to be collected can be conveniently entered thereon, then said auditor shall enter on said roll a description of the lot or parcel affected, with the name of the owners if known but otherwise described as "Unknown Owners," and extend the proper installment opposite same. In the event of a subdivision of the lot or parcel affected into separate holdings, the owners of same may in writing request the auditor to separate the installments according to some fixed proportions to be stated by them and to enter same in said roll opposite their respective holdings in accordance therewith. Such owners shall in connection therewith in writing waive objections to the proceeding and to the method of collecting assessments proposed by them and agree to pay future installments in accordance therewith. Thereafter the

auditor shall enter such installments opposite the respective lots or parcels of land in the proportions agreed upon; provided, however, such division of the installments shall not be so disproportioned to the relative values of the separate holdings of land as to jeopardize the security of the assessments.

Assessments may be released.

Sec. 15. Any interested property owner may release and pay any such unpaid assessment by depositing with the city treasurer the total unpaid balance of any such assessment together with the total interest which would become due on such assessment were it paid in the regular way; provided, that if the amount of same be sufficient to provide surplus moneys with which to redeem any bond outstanding and not due the next second day of July, then such person so releasing such assessment may direct the treasurer to redeem such bond, and the treasurer shall then give the proper notice for redeeming such bond, by advancing its maturity as hereinbefore provided upon which redemption the person releasing such assessment shall be entitled to credit and reimbursement for the par value of any coupons thereon which shall be canceled but not paid, less any costs incurred for publishing any notice of redemption.

Special tax to protect city.

Sec. 16. The city council may, at the time of fixing the annual tax rate and levying the taxes to be collected for general municipal purposes, levy a special tax upon the taxable property in the city for the purpose of paying for the lands purchased or to be purchased at such tax sales, but not to exceed ten cents on each one hundred dollars of assessable property. Such special tax shall be in addition to all other taxes levied for municipal purposes, and shall be computed, entered and collected in the same manner, and by the same persons, and at the same time and with the same penalties and interest as are other municipal taxes of said city. In the event of a surplus remaining in said redemption fund after payment of all said bonds and the interest thereon, the same shall first be applied to repayment to said city of any special taxes so levied less its recovery on the lands purchased at delinquent sale, and also of any costs incurred by it hereunder, and then be proportionately credited upon the final installments due upon said assessments securing said bonds and repaid to those paying same if previously paid.

Effect of certificate of sale and deed.

Sec. 17. In the event of sale by the tax collector of any lot or parcel of land for nonpayment of taxes, and of any installment of the assessment thereon, or of the penalties, interest or costs on same or for nonpayment of any installment, penalties, interest or costs, then any certificate of such sale and deed issued pursuant thereto, is primary evidence of the regularity of all proceedings theretofore had, and shall be conclusive evidence of all things of which bonds issued

upon the security thereof are conclusive evidence, and prima facie evidence of the regularity of all proceedings subsequent to the issuance of the bonds, and such deed conveys to the grantee the absolute title to the lands described therein, free of all incumbrances, except the lien for other state, county and municipal taxes, and unmatured assessments thereon.

Definitions.

Sec. 18. The term "city auditor" as used in this act shall be held to mean and include any person who, under whatever name or title, is charged with the duty of extending taxes upon the assessment rolls and lists. The term "tax collector" as used in this act shall be held to mean and include any person who, under whatever name or title, is charged with the duty of collecting taxes, advertising delinquent lists of unpaid taxes, selling lands thereunder and executing certificates of sale and deeds thereon. Wherever in this act the name of any municipal body or other officer is used, or any word or phrase is used which is not herein expressly defined, it means and shall be taken to mean such municipal body or officer, or word or phrase as the same respectively is expressly defined in said street work act.

Directory provisions.

Sec. 19. The provisions of this act relative to the performance of official duty as to any time or place and relative to the form of any resolution, notice, order, list, certificate of sale, deed or other instrument, shall be deemed directory. No bond, coupon, assessment or installment thereof or of interest or penalties thereon shall be held invalid for error in the computation of the proper amount due on same, provided the error be found to be comparatively negligible.

Effect of act.

Sec. 20. This act shall in no wise affect an act entitled "An act to provide a system of street improvement bonds to represent certain assessments for the cost of street work and improvement within municipalities, and also for payment of said bonds," approved February 27, 1893, nor part III of the "improvement act of 1911" hereinbefore referred to, nor any similar acts on the same subject, or apply to proceedings had thereunder, but is intended to and does provide an alternate system for the issuance of bonds to represent and be secured by the assessments mentioned in this act; and it shall be in the discretion of the legislative body of any city to proceed under the provisions of this act or of such other acts; but when any proceedings for the issuance of bonds are commenced under this act, as amended from time to time, the provisions of this act, and of such amendments thereof as may be hereafter adopted, and no other, shall apply to all such proceedings, and any provisions contained in said acts or any acts in conflict herewith shall be void and of no effect as to such proceedings commenced under this act. This act may be designated and referred to as the "improvement bond act of 1915."

VROOMAN STREET ACT

An act to provide for work upon streets, lanes, alleys, courts, places, and sidewalks, and for the construction of sewers within municipalities.

[Approved March 18, 1885. Statutes 1885, p. 147.]

(Amended 1887, p. 148; 1889, p. 157; 1891, pp. 116, 196, 461; 1893, pp. 33, 89, 172; 1899, p. 23; 1903, p. 88; 1905, pp. 15, 63; 1907, pp. 126, 1000; 1909, pp. 31, 399, 1017; 1911, pp. 626, 849; 1913, pp. 353, 402; 1915, p. 1400; 1919, p. 481.)

PART I.

Public streets defined.

Sec. 1. All streets, lanes, alleys, places, or courts, in the municipalities in this state now open or dedicated, or which may hereafter be opened or dedicated to public use, shall be deemed and held to be open public streets, lanes, alleys, places, or courts, for the purposes of this act, and the city council of each municipality is hereby empowered to establish and change the grades of said streets, lanes, alleys, places, or courts, and fix the width thereof, and is hereby invested with jurisdiction to order to be done thereon any of the work mentioned in section 2 of this act, under the proceedings hereinafter described.

Cities may order streets improved.

Sec. 2. Whenever the public interest or convenience may require, the city council is hereby authorized and empowered to order the whole or any portion, either in length or width, of any one or more of the streets, avenues, lanes, alleys, courts, places, boulevards, highways, crossings, intersections or public ways of any such city graded or regraded to the official grade, planked or replanked, paved or repaved, macadamized or remacadamized, graveled or regraveled, piled or repiled, capped or recapped, oiled or reoiled, and to order the construction or reconstruction therein of sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings and parkways, sewers, ditches, drains, conduits and channels for sanitary and drainage purposes or either or both thereof, with outlets, cesspools, manholes, catch basins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels and other appurtenances, pipes, hydrants and appliances for fire protection, or the distribution of a municipal water supply, tunnels, viaducts, conduits and subways, breakwaters, levees, bulkheads and walls of rock or other material to protect the same from overflow or injury by water, and poles, posts, wires, pipes, conduits, lamps and other suitable or necessary appliances for the purpose of lighting the same, the planting

of trees thereon, and the construction or reconstruction in, over or through property or rights of way owned by such city, of tunnels, sewers, ditches, drains, conduits and channels for sanitary and drainage purposes or either or both thereof, with necessary outlets, cesspools, manholes, catch basins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels and other appurtenances, pipes, hydrants and appliances for fire protection and break waters, levees, bulkheads and walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways and other property in any such city, from overflow by water, and poles, posts, wires, pipes, conduits, lamps and other suitable or necessary appliances for the purpose of lighting the streets, avenues, lanes, alleys, courts, public ways and other property in any such city, and to order any work to be done which shall be deemed necessary to improve the whole or any portion of such streets, avenues, sidewalks, lanes, alleys, courts, places or public ways or property or rights of way of such city, including the acquisition, construction, reconstruction, extension, maintenance or repair of any public utility owned or proposed to be acquired by any municipal corporation, or the pipes, wires, conduits and other appliances and appurtenances for the operation thereof; provided, that such acquisition of any public utility already installed, and any of the appliances and appurtenances thereof shall not be included in the same proceeding with any of the other improvements mentioned in this section. [As amended, Statutes 1915, p. 1400.]

Resolution of intention. Publications and notices posted. Objections, etc.

Sec. 3. Before ordering any work done or improvement made, which is authorized by section 2 of this act, the city council shall pass a resolution of intention so to do, and describing the work, which shall be posted conspicuously for two days on or near the chamber door of said council, and published by two insertions in one or more daily, semi-weekly or weekly newspapers published and circulated in said city and designated by said council for that purpose. Whenever the construction of culverts, bridges, gutters, curbs, steps, parkings and parkways, sewers, ditches, drains, conduits and channels for sanitary and drainage purposes, or either or both thereof, together with appurtenances, pipes, wires, conduits and other appliances and appurtenances, constitutes the work or improvement or any portion thereof mentioned in the resolution of intention, such resolution of intention shall be sufficient if it mentions the fact that the construction of said improvements, or such of them as it be desired to have done in the work or improvement, is embraced in the said work or improvement, briefly describes the same and refers to plans and specifications on file with the city engineer or city clerk for particulars. The street superintendent shall, after the passage of the resolution of intention, cause to be conspicuously posted along all streets and parts of streets or other public places and rights.

of way where any work is to be done or improvement made at not more than three hundred (300) feet apart but not less than three in all, or when the work to be done is only upon an entire crossing or any part thereof, in front of each quarter block and irregular block liable to be assessed, notices of the passage of said resolution. Said notices shall be headed "notice of street work," in letters of not less than one inch in length, and shall, in legible characters, state the fact of the passage of the resolution, its date and briefly describe the work or improvement proposed, and refer to the resolution for further particulars. He shall also cause a notice similar in substance, to be published by two insertions in one or more daily newspapers published and circulated in said city, and designated by said city council, or in cities where there is no daily newspaper by one insertion in a semi-weekly or weekly newspaper so published, circulated and designated. In case there is no such paper published in said city, said notice shall be posted for six days on or near the chamber door of said council, and in two other conspicuous places in said city, as hereinafter provided. The city clerk shall immediately upon the passage of said resolution of intention mail, postage prepaid, to each property owner whose property is to be assessed, to pay the costs and expenses of said improvement at his last known address as the same appears upon the tax rolls of said city, or when no address so appears, to the general delivery, a postal card containing a notice which shall be in the following, or substantially the following form (filling blanks): "You are hereby notified that on the..... day of....., 19....., the council of the city of....., California, by virtue of an act commonly known as 'the Vrooman act,' passed a resolution of intention providing for the improvement ofstreet between.....street and.....street. You are hereby referred to the said resolution for further particulars. Property belonging to you is to be assessed for this improvement. .

.....City Clerk."

If any lots or parcels of land in the assessment district be assessed to "unknown owners" on the tax rolls of said city, no postal cards containing such notice need be mailed to the owners thereof. The city clerk shall, upon the completion of the mailing of said postal cards, file in the office of the superintendent of streets an affidavit setting forth the time and manner of the compliance with this requirement; provided, that the failure of the city clerk to mail said cards, or the failure of the property owners to receive the same, or the failure of the superintendent of streets to post the notices of street work, shall in no wise affect the validity of the proceedings or prevent the city council from acquiring jurisdiction to order the work; provided, however, that the city council may require affidavits to be filed showing the posting and mailing of notices before it adopts the resolution ordering the work. The owners of a majority of the frontage of the property fronting on

said proposed work or improvement where the same is for one block or more, may make a written objection to the same within ten days after the expiration of the time of the publication and posting of said notice, which objection shall be delivered to the clerk of the city council who shall indorse thereon the date of its reception by him, and such objections so delivered and indorsed shall be a bar for six months to any further proceedings in relation to the doing of said work or making said improvements, unless the owners of one-half or more of the frontage, as aforesaid, shall meanwhile petition for the same to be done. At any time before the issuance of the assessment roll, all owners of lots or lands liable to assessment therein, who, after the first publication of said resolution of intention, may feel aggrieved, or who may have objections to any of the subsequent proceedings of said council in relation to the performance of the work mentioned in said notice of intention, shall file with the clerk a petition of remonstrance, wherein they shall state in what respect they feel aggrieved, or the proceedings to which they object; such petition or remonstrance shall be passed upon by the said city council, and its decision therein shall be final and conclusive. But when the work or improvement proposed to be done is the construction of sewers, manholes, culverts, or cesspools, crosswalks, or sidewalks, curbs and gutters, and the objection thereto is signed by the owners of a majority of the frontage liable to be assessed for the expense of said work, as aforesaid, the city council shall, at its next meeting, fix a time for hearing said objections, not less than one week thereafter. The city clerk shall thereupon notify the persons making such objections, by depositing a notice thereof in the postoffice of said city, postage prepaid, addressed to each objector, or his agent, when he appears for such objector. At the time specified said city council shall hear the objections urged, and pass upon the same, and its decision shall be final and conclusive, and the said bar for six months to any further proceedings shall not be applicable thereto. And when not more than two blocks, including street crossings, remain ungraded to the official grade, or otherwise unimproved, in whole or in part, and a block or more on each side upon said street has been so graded or otherwise improved, or when not more than two blocks at the end of a street remain so ungraded or otherwise unimproved, said city council may order any of the work mentioned in this act to be done upon said intervening ungraded or unimproved part of said street, or at the end of a street, and said work upon said intervening part, or at the end of a street, shall not be stayed or prevented by any written or other objection unless such council shall deem proper. And if one-half or more in width or in length, or as to grading, one-half or more of the grading work of any street lying and being between two successive main street crossings, or if a crossing has been already partially graded or improved as aforesaid, said council may order the remainder improved, graded or otherwise, notwithstanding such objections of property owners. At the expiration of twenty days after the expiration of the time of said publication by

said street superintendent, and at the expiration of twenty-five days after the advertising and posting, as aforesaid, of any resolution of intention, if no written objection to the work therein described has been delivered, as aforesaid, by the owners of a major frontage of the property fronting on said proposed work or improvement, or if any written objection purporting to be signed by the owners of a major frontage is disallowed by said council, as not of itself barring said work for six months, because in its judgment, said objection has not been legally signed by the owners of a majority of said frontage, the city council shall be deemed to have acquired jurisdiction to order any of the work to be done, or improvement to be made, which is authorized by this act; which order, when made, shall be published for two days, the same as provided for the publication of the resolution of intention. Before passing any resolution for the construction of said improvements, plans and specifications and careful estimates of the costs and expenses thereof shall be furnished to said city council, if required by it, by the city engineer of said city; and for the work of constructing sewers, specifications shall always be furnished by him. Whenever the contemplated work or improvement in the opinion of the city council, is of more than local or ordinary public benefit, or whenever, according to estimates to be furnished by the city engineer, the total estimated costs and expenses thereof would exceed one-half the total assessed value of the lots and lands assessed, if assessed upon the lots or land fronting upon said proposed work or improvement, according to the valuation fixed by the last assessment roll whereon it was assessed for taxes for municipal purposes, and allowing a reasonable depth from such frontage for lots or lands assessed in bulk, the city council may make the expense of such work or improvement chargeable upon a district, which said city council shall, in its resolution of intention, declare to be assessed to pay the costs and expenses thereof. Said resolution of intention shall in general terms describe the said district and refer to a plat or map approved by the city council, which shall indicate by a boundary line the extent of the territory to be included in said assessment district, which plat or map shall be on file in the office of the city engineer before said superintendent of streets shall proceed with the publication and posting of the notices of street work, and shall govern for all details as to the extent of the said assessment district. Objections to the extent of the district of lands to be affected or benefited by said work or improvement, and to be assessed to pay the cost and expenses thereof, may be made by interested parties, in writing, within ten days after the expiration of the time of the publication of the notice of the passage of the resolution of intention. The city clerk shall lay such objections before the city council, which shall, at its next meeting, fix a time for hearing said objections not less than one week thereafter. The city clerk shall thereupon notify the persons making such objections by depositing a notice thereof in the postoffice of said city, postage prepaid, addressed to each objector. At the time specified the city council shall

hear the objections urged, and pass upon the same, and its decision shall be final and conclusive. If the objections are sustained, all proceedings shall be stopped; but proceedings may be immediately again commenced by giving the notice of intention to do the said work or make said improvements. If the objections are overruled by the city council, the proceedings shall continue the same as if such objections had not been made. [As amended, Statutes 1913, p. 403.]

Council may order work done after majority of frontage petitions.

Sec. 4. The owners of a majority in frontage of lots and lands fronting on any street, avenue, lane, alley, place, or court, or of lots or lands liable to be assessed for the expense of the work petitioned to be done, or their duly authorized agents, may petition the city council to order any of the work mentioned in this act to be done, and the city council may order the work mentioned in said petition to be done, after notice of its intention so to do has been posted and published as provided in section 3 of this act. [As amended, Statutes 1891, p. 199.]

Procedure preliminary to letting contracts. Award of contract, etc.

Sec. 5. Before the awarding of any contract by the city council for doing any work authorized by this act, the city council shall cause notice, with specifications, to be posted conspicuously for five days on or near the council chamber door of said council, inviting sealed proposals or bids for doing the work ordered, and shall also cause notice of said work inviting said proposal, and referring to the specifications posted or on file, to be published for two days in a daily, semi-weekly, or weekly newspaper, published and circulated in said city, designated by the council for that purpose, and in case there is no newspaper published in said city, then it shall only be posted as hereinbefore provided. All proposals or bids offered shall be accompanied by a check payable to the order of the mayor of the city, certified by a responsible bank, for an amount which shall not be less than ten per cent of the aggregate of the proposal, or by a bond for the said amount and so payable, signed by the bidder and by two sureties, who shall justify, before any officer competent to administer an oath, in double the said amount, and over and above all statutory exemptions. Said proposals or bids shall be delivered to the clerk of the said city council, and said council shall, in open session, examine and publicly declare the same; provided, however, that no proposal or bid shall be considered unless accompanied by said check or bond satisfactory to the council. The city council may reject any and all proposals or bids should it deem this for the public good, and also the bid of any party who has been delinquent and unfaithful in any former contract with the municipality, and shall reject all proposals or bids other than the lowest regular proposal or bid of any responsible bidder, and may award the contract for said work or improvement to the lowest responsible bidder at the prices named in his bid, which award shall be approved by the mayor or a three-fourths

vote of the city council. If not approved by him, or a three-fourths vote of the city council, without further proceedings, the city council may readvertise for proposals or bids for the performance of the work as in the first instance, and thereafter proceed in the manner in this section provided, and shall thereupon return to the proper parties the respective checks and bonds corresponding to the bids so rejected. But the checks accompanying such accepted proposals or bids shall be held by the city clerk of said city until the contract for doing said work, as hereinafter provided, has been entered into, either by said lowest bidder or by the owners of three-fourths part of the frontage, whereupon said certified check shall be returned to said bidder. But if said bidder fails, neglects or refuses to enter into the contract to perform said work or improvement, as hereinafter provided, then the certified check accompanying his bid and the amount therein mentioned, shall be declared to be forfeited to said city, and shall be collected by it and paid into its fund for repairs of streets; any bond forfeited may be prosecuted, and the amount due thereon collected and paid into said fund. Notice of such awards of contracts shall be posted for five days, in the same manner as hereinbefore provided for the posting of proposals for said work. It shall be published for two days in a daily newspaper published and circulated in said city and designated by said city council, or in cities where there is no daily newspaper, by one insertion in a semi-weekly or weekly newspaper so published, circulated and designated; provided, however, that in case there is no newspaper printed or published in any such city, then such notice of award shall only be kept posted as hereinbefore provided. The owners of three-fourths of the frontage of lots and lands upon the street whereon said work is to be done, or their agents, and who shall make oath that they are such owners or agents, shall not be required to present sealed proposals or bids, but may, within ten days after the first posting and publication of said notice of said award, elect to take said work and enter into a written contract to do the whole work at the price at which the same has been awarded. Should the said owners fail to elect to take said work, and to enter into a written contract therefor within ten days, or to commence the work within fifteen days after the first posting and publication of said award, and to prosecute the same with diligence to completion, it shall be the duty of the superintendent of streets to enter into a contract with the original bidder to whom the contract was awarded, and at the prices specified in his bid. But if such original bidder neglects, fails or refuses, for fifteen days after the first posting and publication of notice of award, to enter into the contract, then the city council, without further proceedings, shall again advertise for proposals or bids as in the first instance, and award the contract of said work to the then lowest regular bidder. The bids of all persons and the election of all owners, as aforesaid, who have failed to enter into the contract as herein provided, shall be rejected in any bidding or election subsequent to the first for the same work. If, however, the owner or contractor, who may have taken any contract,

do not complete the same within the time limited in the contract, or within such further time as the city council may give them, the superintendent of streets shall report such delinquency to the city council, which may relet the unfinished portion of said work, after pursuing the formalities prescribed hereinbefore for the letting of the whole in the first instance. All contractors, contracting owners included, shall, at the time of executing any contract for street work, execute a bond to the satisfaction and approval of the superintendent of streets of said city, with two or more sureties and payable to such city, in such sums as the mayor shall deem adequate, conditioned for the faithful performance of the contract; and the sureties shall justify before any person competent to administer an oath, in double the amount mentioned in said bond, over and above all statutory exemptions. Before being entitled to a contract, the bidder to whom the award was made, or the owners who have elected to take the contract, must advance to the superintendent of streets, for payment by him, the cost of publication of notices, resolutions, orders, or other incidental expenses and matters required under the proceedings prescribed in this act, and such other notices as may be deemed requisite by the city council; provided, however, that all contracts entered into between the owners of any property and the contractor or his agents to perform the work of improvement on any street, alley, lane, avenue, place, or court, shall be in triplicate and shall contain all items of expense and the total contract price therefor, and no other payment shall be allowed to or recovered by such contractor, other than as itemized and set forth in said contract. The original of such contract shall be held by the city, one copy thereof shall be held by the contractor or his agent, and one copy thereof duplicate shall be held by the owners. And in case the work is abandoned by the city before the letting of the contract, the incidental expenses incurred previous to such abandonment shall be paid out of the city treasury. [As amended, Statutes 1911, p. 849.]

Notice of faulty proceedings. Objections, when deemed to be waived.

Sec. 5½. At any time within ten days from the date of the first publication of the notice of award of contract, any owner of or other person having any interest in any lot or land liable to assessment, who claims that any of the previous acts or proceedings relating to said improvement are irregular, defective, erroneous or faulty, may file with the clerk of the city council a written notice specifying in what respect said acts and proceedings are irregular, defective, erroneous or faulty. Said notice shall state that it is made in pursuance of this section. All objections to any act or proceeding, prior to the date of the aforesaid notice of award, in relation to said improvement, not made in writing and in the manner and at the time aforesaid, shall be waived, excepting as to matters directly affecting the jurisdiction of the council to order the said work or improvement. [New section, Statutes 1909, p. 31.]

Superintendent of streets, power and duties. Work and materials, assessment and expense.

Sec. 6. The superintendent of streets is hereby authorized, in his official capacity, to make all written contracts, and receive all bonds authorized by this act, and to do any other act, either express or implied, that pertains to the street department under this act, and he shall fix the time for the commencement, which shall not be more than fifteen days from the date of the contract, and for the completion of the work under all contracts entered into by him, which work shall be prosecuted with diligence from day to day thereafter to completion, and he may extend the time so fixed from time to time under the direction of the city council. The work provided for in section 2 of this act must, in all cases, be done under the direction and to the satisfaction of the superintendent of streets, and the materials used shall comply with the specifications and be to the satisfaction of said superintendent of streets, and all contracts made therefor must contain a provision to that effect, and also express notice that in no case, except where it is otherwise provided in this act, will the city, or any officer thereof, be liable for any portion of the expense, nor for any delinquency of persons or property assessed. The city council may, by ordinance, prescribe general rules directing the superintendent of streets and the contractor as to the materials to be used, and the mode of executing the work under all contracts thereafter made. The assessment and apportionment of the expenses of all such work or improvement shall be made by the superintendent of streets in the same mode herein provided.

Securing claim for labor, etc., for street and sewer work. Filing of claim and action on.

Sec. 6½. Every contractor, person, company or corporation including contracting owners, to whom is awarded any contract for street work under this act, shall, before executing the said contract, file with the superintendent of streets a good and sufficient bond, approved by the mayor, in a sum not less than one-half of the total amount payable by the terms of said contract; such bond shall be executed by the principal and at least two sureties, who shall qualify for double the sum specified in said bond, and shall be made to inure to the benefit of any and all persons, companies, or corporations who perform labor on, or furnish materials to be used in the said work of improvement, and shall provide that if the contractor, person, company, or corporation to whom said contract was awarded fails to pay for any materials so furnished for the said work of improvement, or for any work or labor done thereon of any kind, that the sureties will pay the same, to an amount not exceeding the sum specified in said bond. Any laborer, materialman, person, company, or corporation, furnishing materials to be used in the performance of said work specified in said contract, or who performed work or labor upon the said improvement, whose claim has not been paid by the said contractor, company or corporation, who executed

the said contract, shall severally have a first lien upon and against the assessment, any partial assessment, any reassessment, and any bonds which may be issued to represent any assessment or reassessment. Such laborers, or materialmen may, at any time prior to thirty days after the recording of the assessment for said work, file with the superintendent of streets a verified statement of his or its claim, together with a statement that the same, or some part thereof, has not been paid. At any time within ninety days after the filing of such claim the person, company, or corporation filing the same or their assigns, may commence an action either to enforce the aforesaid lien, or on said bond, for the recovery of the amount due on said claim, together with the costs incurred in said action, and a reasonable attorney fee, to be fixed by the court, for the prosecution thereof. [As amended, Statutes 1919, p. 481.]

Method of assessment.

Expenses of work.

Sec. 7. Subdivision One.—The expenses incurred for any work authorized by this act (which expense shall not include the cost of any work done in such portion of any street as is required by law to be kept in order or repair by any person or company having railroad tracks thereon, nor include work which shall have been declared in the resolution of intention to be assessed on a district benefited) shall be assessed upon the lots and lands fronting thereon, except as herein specifically provided; each lot or portion of a lot being separately assessed, in proportion to the frontage, at a rate per front foot sufficient to cover the total expense of the work.

Street crossings.

Subdivision Two.—The expense of the work done on main street crossings shall be assessed at a uniform rate per front foot of the quarter blocks and irregular blocks adjoining and cornering upon the crossings, and separately upon the whole of each lot or portion of a lot having any frontage in the said blocks fronting on said main streets, half way to the next main street crossing, and all the way on said blocks to a boundary line of the city where no such crossing intervenes, but only according to its frontage in said quarter blocks and irregular blocks.

One street terminating in another.

Subdivision Three.—Where a main street terminates in another main street, the expenses of the work done on one-half of the width of the street opposite the termination shall be assessed upon the lots in each of the two quarter blocks adjoining and cornering on the same, according to the frontage of such lots on said main streets, and the expense of the other half of the width of said street upon the lot or lots fronting on the latter half of the street at such termination.

Alley crossings.

Subdivision Four.—Where any alley or subdivision street crosses a main street, the expense of all work done on said crossing shall be as-

sessed on all lots or portions of lots half way on said alley or subdivision street to the next crossing or intersection, or to the end of such alley or subdivision street, if it does not meet another.

Alley crossings.

Subdivision Five.—The expense of work done on alley or subdivision street crossings shall be assessed upon the lots fronting upon such alley or subdivision streets on each side thereof, in all directions, half way to the next street, place or court, on either side, respectively, or to the end of such alley or subdivision street, if it does not meet another.

One alley, etc., terminating in another.

Subdivision Six.—Where a subdivision street, avenue, lane, alley, place or court terminates in another street, avenue, lane, alley, place or court, the expense of the work done on one-half of the width of the subdivision street, avenue, lane, alley, place or court opposite the termination, shall be assessed upon the lot or lots fronting on such subdivision street, avenue, lane, alley, place or court so terminating, according to its frontage thereon, half way, on each side, respectively, to the next street, avenue, lane, alley, place or court or to the end of such street, avenue, lane, alley, place or court, if it does not meet another, and the other one-half of the width upon the lots fronting such termination.

Work on one side of street.

Subdivision Seven.—Where any work mentioned in this act (man-holes, sewers, cesspools, culverts, crosswalks, piling and capping excepted) is done on one side of the center line of any street or sewerage or re sewerage is ordered to be done under the sidewalk on only one side of any street for any length thereof, the assessment for the expenses thereof shall be made only upon the lots and lands fronting nearest upon that side of the street and for intervening intersections only upon the two quarter blocks adjoining and cornering upon that side.

Property belonging to U. S., state or city front on work.

Subdivision Eight.—Whenever any lot, piece or parcel of land belonging to the United States or to the State of California, or any lot, piece or parcel of land belonging to any county, city, public agent, mandatory of the government, school board, educational, penal or reform institution or institution for the feeble-minded or the insane, and being in use in the performance of any public function, fronts upon the proposed work or improvement or is included within the district declared by the city council in the resolution of intention to be the district to be assessed to pay the costs and expenses thereof, the city council may, in its discretion, in the resolution of intention, declare that said lots, pieces or parcels of land so owned and in use, or any of them, shall be omitted from the assessment to be made to cover the cost and expenses of said work or improvement. In the event that said lots, pieces or

parcels of land, or any of them, shall by said resolution be omitted from the assessment then the total expense of all work done shall be assessed on the remaining lots fronting on the work or improvement or lying within the limits of the assessment district without regard to such omitted lots, pieces or parcels of land. In the event the city council shall, in its resolution of intention, declare that the said lots, pieces or parcels of land so owned and in use, or any of them, shall be included in the assessment, or in the event that no declaration is made respecting such lots, pieces or parcels of land, then such sum or sums as thereafter may be assessed against such lots, pieces or parcels of land, so owned and used, shall be payable by the city out of the general fund, unless the council shall in its resolution of intention designate another fund and the contract for said work or improvement thereafter made shall contain a provision to that effect.

Owners may do grading.

Subdivision Nine.—It shall be lawful for the owner or owners of lots or lands fronting upon any street, the width and grade of which have been established by the city council, to perform, at his or their own expense (after obtaining permission from the council so to do, but before said council has passed its resolution of intention to order grading inclusive of this), any grading upon said street, to its full width, or to the center line thereof, and to its grade as then established, and thereupon to procure, at his or their own expense, a certificate from the city engineer, setting forth the number of cubic yards of cutting and filling made by him or them in said grading, and the proportions performed by each owner, and that the same is done to the established width and grade of said street, or to the center line thereof, and thereafter to file said certificate with the superintendent of streets, which certificate the superintendent shall record in a book kept for that purpose in his office, properly indexed. Whenever thereafter the city council orders the grading of said street, or any portion thereof, on which any grading certified as aforesaid has been done, the bids and contracts must express the price by the cubic yard for cutting and filling in grading; and the said owner or owners and his or their successors in interest, shall be entitled to credit, on the assessment upon his or their lots and lands fronting on said streets for the grading thereof, to the amount of the cubic yards of cutting and filling set forth in his or their certificate, at the prices named in the contract for said cutting and filling; or, if the grade meanwhile has been duly altered, only for so much of said certified work as would be required for grading to the altered grade; provided, however, that such owner or owners shall not be entitled to such credit as may be in excess of the assessments for grading upon the lots and lands owned by him or them, and proportionately assessed for the whole of said grading; and the superintendent of streets shall include in the assessment for the whole of said grading upon the same grade the number of cubic yards of cutting and

filling set forth in any and all certificates so recorded in his office, or for the whole of said grading to the duly altered grade so much of said certified work as would be required for grading thereto, and shall enter corresponding credits, deducting the same as payments upon the amounts assessed against the lots and lands owned, respectively, by said certified owners and their successors in interest; provided, however, that he shall not so include any grading quantities or credit any sums in excess of the proportionate assessments for the whole of the grading which are made upon any lots and lands fronting upon said street and belonging to any such certified owners or their successors in interest. Whenever any owner or owners of any lots and lands fronting on any street shall have heretofore done, or shall hereafter do any work, (except grading) on such street, in front of any block, at his or their own expense, and the city council shall have subsequently ordered any work to be done of the same class in front of the same block, said work so done at the expense of such owner or owners shall be excepted from the order ordering work to be done; provided that the work so done at the expense of such owner or owners, shall be upon the official grade, and in condition satisfactory to the street superintendent at the time said order is passed.

Diagram of district. Plan of assessment.

Subdivision Ten.—Whenever the resolution of intention declares that the cost and expenses of the work and improvement are to be assessed upon a district, the city council shall direct the city engineer to make a diagram of the property affected or benefited by the proposed work or improvement, as described in the resolution of intention, and to be assessed to pay the expenses thereof. Such diagram shall show each separate lot, piece or parcel of land, the area in square feet of each of such lots, pieces or parcels of land, and the relative location of the same to the work proposed to be done, all within the limits of the assessment district; and when said diagram shall have been approved by the city council, the clerk shall, at the time of such approval, certify the fact and date thereof. Immediately thereafter the said diagram shall be delivered to the superintendent of streets of said city, who shall, after the contractor of any street work has fulfilled his contract to the satisfaction of said superintendent of streets or city council, on appeal, proceed to estimate upon the lands, lots or portions of lots within said assessment district, as shown by said diagram, the benefits arising from such work, and to be received by each such lot, portion of such lot, piece, or subdivision of land, and shall thereupon assess upon and against said lands in said assessment district the total amount of the costs and expenses of such work, and in so doing shall assess said total sum upon the several pieces, parcels, lots, or portions of lots, and subdivisions of land in said assessment district benefited thereby, to wit: Upon each respectively, in proportion to the estimated benefits to be received by each of said several lots, portions of lots, or subdivi-

sions of land. In other respects the assessment shall be as provided in the next section.

Railroad subject to assessment.

Subdivision Eleven.—The terms lot, lots, lands, piece or parcel of land wherever mentioned in this act shall be deemed to include and shall include property owned or controlled by any person, firm or corporation as a railroad, street or interurban railroad, right of way, and whenever a railroad, street or interurban railroad right of way shall front or abut on any street improved under the provisions of this act or shall be included within any district to be assessed for the cost of any improvement provided in this act, such railroad right of way (whether the same is owned in fee or as an easement) shall be included in the warrant, assessments, and diagram and shall be assessed in the same manner and with the same effect as other lots, lands or pieces or parcels of land are assessed as provided in this act and such railroad right of way shall be subject to sale for non-payment of assessments as in this act provided.

Railroads to improve streets between tracks.

Subdivision Twelve.—Whenever any railroad track or tracks of any description exist upon the street or streets upon which the city council of any city has ordered an improvement to be made, and has excepted therefrom the portions used by the track, between the rails and for two feet on each side thereof, and between the tracks if there be more than one, the said order, unless said city council shall by resolution theretofore passed have declared the contrary, shall be deemed to be and constitute a requirement that the person or company having said railroad track or tracks thereon shall improve the said portion with improvements similar in all respects to, with the same materials, under the same specifications and superintendence, and to the like satisfaction as those ordered to be performed by said order ordering the work, and the resolution of intention and notice of proposed improvement shall be construed and are hereby declared to be notice to said person or company of the intention to order the same. Thereupon it shall be the duty of said person or company having such track or tracks on such street or streets to notify in writing the superintendent of streets if such person or company elects to perform such work at its own charge and expense and under its own direction; said notice must be delivered to the superintendent of streets within ten days after the first publication of notice or award of contract. The omission or neglect to make such election shall be construed as constituting the superintendent of streets the agent of the owner of said track or tracks, with authority to enter into a contract made in accordance with the provisions of this section for making the said improvements. Said superintendent of streets shall advertise for bids for the improvement of said portions of street or streets lying between the rails and for two feet on each side thereof, and between the tracks, if there be more than one. It

shall be the duty of said city council to award the contract for the making of said improvements to the lowest regular responsible bidder. Such bidding and awarding of contracts shall be made in the same manner hereinbefore provided for the awarding of contracts for improvements, excepting that no notice of award shall be published. Immediately upon the award, the superintendent of streets shall enter into a contract with the person to whom said contract was awarded for the making of said improvement or improvements upon the portions of the street or streets described in said notice inviting bids, and at the price stated in said bid. The contractor shall execute bonds in the manner required for the execution of contracts for improvements. Upon the completion of the work and its acceptance, the street superintendent shall make a certificate of such completion together with a statement of the amount due under the terms of said contract for the performance of said work. Such certificate shall be countersigned by the mayor of said city, and shall be recorded in the office of said superintendent of streets. The contractor shall thereupon be entitled to payment of the full amount of said contract price, and the recording of such certificate shall be sufficient notice to the owner of such track or tracks that said contract price is due and payable. In the event that such amount is not paid within thirty days from the date of the recording of said certificate, the contractor may file a sworn statement to that effect with the superintendent of streets, who shall record the same in his office in the book in which the certificate of acceptance has been recorded. Said contractor shall thereupon have a cause of action against said person or company owning said track or tracks for the amount of said contract, together with a reasonable attorney's fee, and shall also have as security for the recovery of such amount, a first lien upon the track and franchises of said person or company, between whose rails or tracks the said work has been performed, contained within the corporate limits of said city. In such suit, the certificate of the superintendent of streets, hereinbefore mentioned, shall be and constitute prima facie evidence of the regularity of all proceedings, and of the right of the contractor to recover judgment against said person or company. Execution may be taken out upon the entry of judgment, and levied upon any property of said person or company subject to execution. In the event that said person or company shall file the written election to perform such work at its own cost and expense and under its own direction, no further proceedings shall be taken in the matter unless such person or company neglects or fails for thirty days, or for such further time as the city council may grant, to make said improvement. In the event that the improvement of the portions of the street or streets above described, between the rails and for two feet on each side thereof, and between the tracks if there be more than one, shall not be made with diligence, or in all respects similar to the improvement of the rest of the street, or with the same materials or under the same specifications, and to the satisfaction of the superintendent of streets, the city council of said

city may, by resolution entered in its minutes, prescribe such terms and conditions as to it may seem fit and proper before permitting the said person or company to continue with the said improvement. If the said person or company shall, after three days' notice of the adoption of said resolution, fail to comply with the terms and conditions so prescribed, the said city council may declare said person or company to have forfeited its privilege of performing such work under its own direction. Whereupon the street superintendent shall advertise for bids for the performance of such work, or such portions thereof as may remain uncompleted, and the contract therefor shall be awarded and entered into in the same manner hereinbefore provided for the awarding and execution of contracts where said person or company has not elected to make the improvement under its own direction; and upon the completion of the improvement, the contractor to whom such contract may be awarded, or his assigns, shall be entitled to a certificate from the street superintendent similar to that hereinbefore provided for, and shall have the right to collect from said person or company by suit the amount specified in such certificate in all respects the same as is hereinbefore provided where the contract is let for such improvement in the first instance.

Council may include various kinds of work in its order.

Subdivision Thirteen.—The said council may include in one resolution of intention and order any of the different kinds of work mentioned in this act, and may include any number of streets and rights of way or portion thereof in one proceeding and one contract, and it may except therefrom any of said work already done upon the street to the official grade. The lots and portions of lots fronting upon said accepted work already done shall not be included in the frontage assessment for the class of work from which the exception is made; provided, that this shall not be construed so as to affect the special provisions as to grading contained in this act. [As amended, Statutes 1911, p. 627.]

Superintendent to make assessment for work. Assessment, how made and what to show.

Sec. 8. After the contractor of any street work has fulfilled his contract to the satisfaction of the street superintendent of said city, or city council on appeal the street superintendent shall make an assessment to cover the sum due for the work performed and specified in said contract (including any incidental expenses) in conformity with the provisions of the preceding sections, according to the character of the work done; or if any direction and decision be given by said council on appeal, then in conformity with such direction and decision, which assessment shall briefly refer to the contract, the work contracted for and performed, and shall show the amount to be paid therefor, together with any incidental expenses, the rate per front foot assessed, if the assessment be made per front foot, the amount of each assessment, the name of the owner of each lot or portion of a lot (if known to the street

superintendent); if unknown, the word "unknown" shall be written opposite the number of the lot, and the amount assessed thereon, the number of each lot or portion or portions of a lot assessed, and shall have attached thereto a diagram exhibiting each street or street crossing, lane, alley, place, or court on which any work has been done, and showing the relative location of each district, lot or portion of lot to the work done, numbered to correspond with the numbers in the assessments, and showing the number of feet fronting, or number of lots assessed, for said work contracted for and performed. [As amended, Statutes 1889, p. 166.]

Form of warrant. Record of warrant. Delivered to contractor.
Course to be pursued in case of error.

Sec. 9. To said assessment shall be attached a warrant, which shall be signed by the superintendent of streets and countersigned by the mayor of said city. The said warrant shall be substantially in the following form:

FORM OF WARRANT.

By virtue hereof, I (name of the superintendent of streets), of the city of ———, county of———, (or city and county of———,) and State of California, by virtue of the authority vested in me as said superintendent of streets, do authorize and empower (name of contractor) (his or their) agents, or assigns to demand and receive the several assessments upon the assessment and diagram hereto attached, and this shall be (his or their) warrant for the same.

(Date)———. (Name of superintendent of streets.)

Countersigned by (name of mayor.)

Said warrant, assessment and diagram, together with the certificate of the city engineer shall be recorded in the office of said superintendent of streets. When so recorded the several amounts assessed shall be a lien upon the lands, lots, or portions of lots assessed, respectively, for the period of two years from the date of said recording, unless sooner discharged; and from and after the date of said recording of any warrant, assessment, diagram and certificate all persons mentioned in section 11 of this act shall be deemed to have notice of the contents of the records thereof. After said warrant, assessment, diagram, and certificate are recorded, the same shall be delivered to the contractor, or his agents or assigns, on demand, but not until after the payment to the said superintendent of streets of the incidental expenses not previously paid by the contractor or his assigns; and by virtue of said warrant, said contractor or his agent or assigns, shall be authorized to demand and receive the amount of the several assessments made to cover the sum due for the work specified in such contracts and assessments. Whenever it shall appear by any final judgment of any court in this state that any suit brought to foreclose the lien of any sum of money assessed to cover the expense of said street work done under the provisions of this act has been defeated by reason of any defect, error,

informality, omission, irregularity, or illegality, in any assessment hereafter to be made and issued, or in the recording thereof, or in the return thereof, made to or recorded by said superintendent of streets, any person interested therein may, at any time within three months after the entry of said final judgment apply to said superintendent of streets who issued the same, or to any superintendent of streets in office at the time of said application, for another assessment to be issued in conformity to law; and said superintendent shall, within fifteen days after the date of said application, make and deliver to said applicant a new assessment, diagram and warrant in accordance with law, and the acting mayor shall countersign the same as now provided by law, which assessment shall be a lien for the period of two years from the date of said assessment, and be enforced as provided in section 7 of this act. [As amended, Statutes 1891, p. 205.]

Demand for payment of assessment. Return of warrant or failure to return. Extension of time. Interest as penalty.

Sec. 10. The contractor, or his assigns, or some person in his or their behalf, shall call upon the persons assessed, or their agents, if they can conveniently be found, and demand payment of the amount assessed to each. If any payment be made, the contractor, his assigns, or some person in his or their behalf, shall receipt the same upon the assessment in presence of the person making such payment, and shall also give a separate receipt if demanded. Whenever the person so assessed, or his agent, cannot conveniently be found, or whenever the name of the owner of the lot is stated as "unknown" on the assessment, then the said contractor, or his assigns, or some person in his or their behalf, shall publicly demand payment on the premises assessed. The warrant shall be returned to the superintendent of streets within thirty days after its date, with a return indorsed thereon, signed by the contractor, or his assigns, or some person in his or their behalf, verified upon oath, stating the nature and character of the demand, and whether any of the assessments remain unpaid, in whole or in part, and the amount thereof. Thereupon the superintendent of streets shall record the return so made, in the margin of the record of the warrant and assessment, and also the original contract referred to therein, if it has not already been recorded at full length in a book to be kept for that purpose in his office, and shall sign the record. The said superintendent of streets is authorized at any time to receive the amount due upon any assessment list and warrant issued by him, and give a good and sufficient discharge therefor; provided, that no such payment so made after suit has been commenced, without the consent of the plaintiff in the action, shall operate as a complete discharge of the lien until the costs in the action shall be refunded to the plaintiff; and he may release any assessment upon the books of his office, on the payment to him of the amount of the assessment against any lot with interest, or on the production to him of the receipt of the party or his assigns to whom

the assessment and warrant were issued; and if any contractor shall fail to return his warrant within the time and in the form provided in this section, he shall thenceforth have no lien upon the property assessed; provided, however, that in case any warrant is lost, upon proof of such loss a duplicate can be issued, upon which a return may be made, with the same effect as if the original had been so returned; provided, further, that the street superintendent may for cause shown on written petition from the contractor or his assigns filed in his office prior to the expiration of said thirty days from the date of the warrant, extend the time for the making of said return for a period not to exceed thirty days additional, which extension shall, with its date, be noted on the warrant. After the return of the assessment and warrant as aforesaid, all amounts remaining due thereon shall draw interest at the rate of ten per cent per annum until paid. [As amended, Statutes 1913, p. 407.]

Owners may object to warrant. Hearing and appeal.

Sec. 11. The owners, whether named in the assessment or not, the contractor or his assigns, and all other persons directly interested in any work provided for in this act, or in the assessment, feeling aggrieved by any act or determination of the superintendent of streets in relation thereto, or who claim that the work has not been performed according to the contract in a good and substantial manner, or having or making any objection to the correctness or legality of the assessment or other act, determination, or proceedings of the superintendent of streets, shall, within thirty days after the date of the warrant, appeal to the city council, as provided in this section, by briefly stating their objections in writing and filing the same with the clerk of said city council. Notice of the time and place of the hearing, briefly referring to the work contracted to be done, or other subject of appeal, and to the acts, determinations or proceedings objected to or complained of, shall be published for five days. Upon such appeal, the said city council may remedy and correct any error or informality in the proceedings, and revise and correct any of the acts or determinations of the superintendent of streets relative to said work, may confirm, amend, set aside, alter, modify or correct the assessment in such manner as to them shall seem just, and require the work to be completed according to the directions of the city council; and may instruct and direct the superintendent of streets to correct the warrant, assessment or diagram in any particular, or to make and issue a new warrant, assessment and diagram, to conform to the decisions of said city council in relation thereto, at their option. All the decisions and determinations of said city council upon notice and hearing as aforesaid, shall be final and conclusive upon all persons entitled to appeal under the provisions of this section, as to all errors, informalities, and irregularities, which said city council might have remedied and avoided; and no assessment shall be held invalid, except upon appeal to the city council, as provided in this sec-

tion, for any error, informality or other defect in any of the proceedings prior to the assessment, or in the assessment itself, where notice of the intention of the city council to order the work to be done, for which the assessment is made has been actually published in any designated newspaper of said city for the length of time prescribed by law, before the passage of the resolution ordering the work to be done.

Contractor may sue on delinquent assessment. Attorneys fees. Demand in writing prerequisite. Proof of service. Consolidation of actions. Evidence of regularity. Redemption.

Sec. 12. At any time after the period of thirty-five days from the day of the date of the warrant as herein provided or if an appeal is taken to the city council as provided in section 11 of this act, or an extension of time is granted to the contractor in which to make his return as provided in section 10 of this act, at any time after five days from either the decision of said council or the expiration of said extension or after the return of the warrant or assessment, after the same may have been corrected, altered or modified as provided in said section 11 (but not less than thirty-five days from the date of the warrant), the contractor or his assignee, may sue, in his own name, the owner of the land, lots, or portions of lots, assessed on the day of the date of the recording of the warrant, assessment, and diagram, or any day thereafter during the continuance of the lien of said assessment, and recover the amount of any assessment remaining unpaid, with interest thereon at the rate of ten per cent per annum until paid. And in all cases of recovery under the provisions of this act, where suit has been brought after one year from the date of the assessment or after personal demand has been made on the owner as hereinafter provided, the plaintiff shall recover the sum of fifteen dollars, in addition to the taxable costs as attorney's fees, but not any percentage upon said recovery; but no suit shall be brought for the recovery of any such assessment and no attorney's fees or costs shall be recovered until a demand in writing has been served personally on the owner of the lot or parcel of land assessed and such owner has failed to pay such assessment before the expiration of ten days after the service of such demand, or unless one year has elapsed from the date of the assessment. Proof of service of such demand shall be made by affidavit in like manner as proof of service of summons in a civil action. If the contractor or his agent or any person acting in behalf of the contractor shall, prior to the filing of a complaint for the recovery of any assessment as herein provided, make any written demand upon or present any bill or notice in writing to such owner, demanding, requesting or notifying such owner to pay or that there is due, attorney's fees or court costs in connection with the collection of such assessment, then the contractor shall forfeit to such owner the amount of such assessment and the superintendent of streets is authorized, upon written demand of such owner, accompanied by the affidavit

of such owner, that such written demand, bill or notice for the payment of attorney's fees and costs, or either thereof, prior to the commencement of suit, to mark said assessment "paid," and such assessment shall thereby be deemed to be paid and the lien thereof released. When the ownership of two or more lots or parcels of land on which assessments in the same proceeding have not been paid is identical, one action may be brought to collect the assessments on all of said lots or parcels of land, and in case more than one action is brought against the owner of more than one lot or parcel of land where the ownership is identical, as aforesaid, the court shall, upon the motion of such owner or owners, consolidate such actions, and in the event of such consolidation of actions and recovery therein, only fifteen dollars as attorney's fee shall, unless otherwise ordered by the court, be recovered; and when suit has been brought as in this section provided, the plaintiff shall be entitled to have and recover said attorney's fee, and taxable costs, notwithstanding that the suit may be settled or a tender may be made before a recovery in said action, and he may have judgment therefor. Suit may be brought in the superior court within whose jurisdiction the city is in which said work has been done, and in case any of the assessments are made against lots, portions of lots, or lands the owners of which cannot, with due diligence, be found, the service of summons in each of such actions may be had in such manner as is prescribed in the codes and laws of this state. The said warrant, assessment, certificate, and diagram, with the affidavit of service of demand and non-payment shall be held prima facie evidence of the regularity and correctness of the assessment and of the prior proceedings and acts of the superintendent of streets and city council upon which said warrant, assessment and diagram are based, and like evidence of the right of the plaintiff to recover in the action. The court in which said suit shall be commenced shall have power to adjudge and decree a lien against the premises assessed, and to order such premises to be sold on execution, as in other cases of the sale of real estate by the process of said court; and on appeal, the appellate courts shall be vested with the same power to adjudge and decree a lien and to order such premises to be sold on execution or decree as is conferred on the court from which an appeal is taken. Such premises, if sold, may be redeemed as in other cases. In all suits now pending, or hereafter brought to recover street assessments, the proceedings therein shall be governed and regulated by the provisions of this act, and also, when not in conflict herewith, by the codes of this state. This act shall be liberally construed to effect the ends of justice. [As amended, Statutes 1913, p. 408.]

New assessments and bonds when old have been declared invalid.

Court to point out irregularity, and order new assessment. City

Council may set aside assessment. Procedure.

Sec. 12¼. Whenever any assessment made and issued under the provisions of this act, or whenever any bond or bonds issued to repre-

sent the amount of any such assessment in accordance with the provisions of "An act to provide a system of street improvement bonds to represent certain assessments for the cost of street work and improvement within municipalities, and also for the payment of such bonds," approved February 27, 1893, and all acts supplementary thereto or amendatory thereof, have been set aside by any court of competent jurisdiction, or such court has refused to enforce any assessment, or has decreed any bond or bonds issued under the above mentioned statute approved February 27, 1893, not to constitute valid and subsisting liens against the lots, pieces or parcels of land upon which the assessments represented by them have been levied, then the superintendent of streets shall cause a new assessment to be made for the same purpose for which the former assessment was made, whether any of the assessments have been paid or not, and new bonds shall in regular course thereafter issue in the event that bonds were issued under or provided for in the original assessment. It is hereby made the duty of any court of competent jurisdiction in rendering its judgment holding invalid any assessment or assessments hereafter made or issued, or of any bond or bonds hereafter made or issued to represent the amount or amounts of any such assessment, to make a finding as to whether or not the issuing of such assessment was entirely without the power of the said city to issue, and if not, then what omission, irregularity, illegality, informality or non-compliance with the requirements of the statute of which this is amendatory has occurred in the proceedings upon which said assessment or assessments and bonds rest, and what effect shall be given to them in making the re-assessment. In the event that the court shall find that the work, the expenses of which are represented by said assessment or bonds, was done in good faith under the contract made pursuant to a resolution of the city council providing for such improvement to be paid for by a special assessment, it shall be the duty of the said court to order the making of a new assessment, which assessment shall be delivered to the contractor or his assigns, or the holder or holders of the bonds representing the assessments, as the case may be. The city council may, at the request of the contractor, his assigns or the holder of the bonds representing the assessments, by resolution duly passed, set aside any assessment or assessments and bonds, as the case may be, and order a new assessment or assessments and bonds, to be made and issued without any decree having been obtained of or from any court regarding said matter, if in its opinion the assessment be invalid, and it may take all necessary steps and make and pass all necessary orders or ordinances to re-assess and re-levy such assessment, and may re-assess and re-levy the same with the same force and effect as an original levy. Such re-assessment, whether made after decree of court has been rendered, or pursuant to a resolution of the council, shall be based upon the special and peculiar benefit of the work or improvement to the respective lots, pieces or parcels of land assessed at the time of the making of the re-assessment, and its total

amount shall not exceed the total amount of the original assessments. Such re-assessment so made shall become a charge upon the property upon which the same is levied, notwithstanding any omission, failure or neglect of any officer, body or person to comply with the provisions of this statute, relating to or connected with the improvement and the issuing of the assessment or the bonds, and notwithstanding the fact that the proceedings of the city council, board of public works or any officer of the city or agent of the contractor or other person connected with such work, may have been irregular, illegal, informal, or defective, or not in full conformity with the requirements of this statute. It is hereby declared to be the true intent and meaning of this section to make the cost and expense of all local improvements actually made in the attempted exercise of the powers conferred upon municipalities under this statute, payable by the real estate benefited by such improvement by making a re-assessment therefor which shall equitably apportion to each lot, piece or parcel of land thereby benefited the amount of the actual benefits derived from said improvement, notwithstanding that the proceedings of the city council and other officers or agents of the city, or of the contractor, may have been irregular, illegal or defective, or not in full conformity with the requirements of this statute. Such re-assessment shall be made without a repetition of the proceedings had prior to the issuance of the assessment and shall be made and issued in the following manner: The superintendent of streets shall, upon the entering of a decree of court directing the re-assessment, or upon the passage of a resolution of the city council directing a re assessment, proceed at once to make a re-assessment in accordance with the said decree of court, or said resolution of the city council. Such re-assessment shall be made upon the property fronting on the improvement or upon the district described in the resolution of intention for said work or improvement, as the case may be, and in the event that there shall have been informalities, uncertainties or ambiguities in the description of the limits of said district, then upon the district which the court or council shall find to be that actually benefited by said improvement, but in so finding said court or council shall follow the lines described in the resolution of intention so far as the same can be ascertained, and in all cases of uncertainty or ambiguity they shall give regard to the lines described and make such a determination as to the lines where there is any uncertainty or ambiguity in the resolution of intention as may be just and equitable. In the event that a portion of the work or improvement has been found to have been entirely without the power of said city to order done, then said assessment shall be for the remainder of the work or improvement only, and the benefits arising from the work entirely without the jurisdiction of the city to order shall not be considered in making the re-assessment. Upon the completion of the re-assessment it shall be presented to the city council and a day of hearing shall be fixed by it which shall be at least twenty (20) days after the filing of the re-assessment. The city clerk shall

then advertise the fact of said filing by publishing a notice in the newspaper in which the notice of award of contract was published, or in such other paper as the council may direct, by five (5) insertions if the paper be a daily, or by two (2) insertions if it be a weekly or semi-weekly newspaper, stating the fact that the re-assessment has been filed with him and that objections to said re-assessment will be heard at the time specified by the city council. At the time fixed for said hearing, or at such time or times to which the same may be thereafter adjourned, the city council shall consider the objections to said re-assessment and in its discretion revise, correct and modify such re-assessment in such manner as is most equitable, and it shall thereupon pass a resolution approving and confirming such re-assessment and such decision shall be a final determination of all matters relating to the actual benefits derived from the improvement by the respective lots, pieces and parcels of land enumerated in the re-assessment. Said re-assessment shall thereupon be recorded by the street superintendent and it shall in all respects have the same effect and weight as the original assessment, and shall be enforced in the same manner. All payments made upon the original assessment shall be credited upon the re-assessment and in the event that the re-assessment in any instance is less than the amount of the original assessment, the excess shall be payable to the owner by the contractor. [New section, Statutes 1913, p. 409.]

City council may use discretion in completion of improvements.

Sec. 12½. The city council instead of waiting until the completion of the improvement may in its discretion, and not otherwise, upon the completion of two blocks or more of any improvement, order the street superintendent to make an assessment for the proportionate amount of the contract completed, and thereupon proceedings and rights of collection of such proportionate amount shall be had as in sections 8, 9, 10, 11 and 12 of the act of which this is amendatory is provided. [New section, Statutes 1889, p. 169.]

Repairs. Contract for repairs may be let.

Contractor may sue owners. Penalties for neglect.

Sec. 13. When any portion of any street, alley, or public place in said city shall be out of repair or needing reconstruction, or in a condition to interfere with the public convenience in the use thereof, it shall be the duty of the superintendent of streets to notify the owner of any lot or portion of a lot, fronting on the portion of such street, alley, or public place, so out of repair or needing reconstruction, to repair or reconstruct such portion of said street, alley, or public place, to the center line of said street, alley, or public place, in front of the property of which he is the owner, or to repair the sidewalk in front of such property in case such sidewalk shall need repair or reconstruction, and he shall state in such notice what work is required to be done, and what materials shall be used in said work and how the same shall be done.

If said repairs or reconstruction be not commenced within ten days after notice given, as aforesaid, and prosecuted to completion diligently, the said superintendent of streets may under authority from said city council let a contract for the performance of such work. He shall post notice at his office for two days inviting bids for the doing of said work of repair or reconstruction, and the contract shall be awarded by him to the lowest bidder, and a contract in writing shall be entered into with the successful bidder. Upon the completion of said repairs or reconstruction to the satisfaction of said superintendent of streets, he shall make and deliver to said contractor a certificate to the effect that said repairs or reconstruction, or both, have been properly made, and state what amount is payable by each owner for the same, which certificate shall be recorded in the office of said superintendent of streets in a book kept for that purpose, and all owners of property in front of which such improvement shall have been performed, shall be deemed to have notice of the contents of the record thereof. The contractor may make demand for the amount due by serving written notice upon the owners, referring to the certificate so recorded, and if the contractor be not paid on demand, he shall have the right to sue each owner for the amount due and payable from each respectively, and the said certificate of the superintendent of streets shall be prima facie evidence of the amount claimed for the work and materials and of the right of the contractor to recover for the same in such action, and the amount so due and payable shall be a first lien upon the respective lots, pieces or parcels of land against which it may be charged and shall have the same effect as the lien hereinbefore provided for in section 9 of this act and may be enforced in the same manner.

In addition, the city council shall have power by ordinance to prescribe the penalties that shall be incurred by any owner for neglecting or refusing to make repairs when required, which penalties shall be recovered for the use of the city by prosecution in the name of the people of the State of California, in the court having jurisdiction thereof, and may be applied, if deemed expedient, by the said city council in the payment of the expense of any such repairs not otherwise provided for. [As amended, Statutes 1911, p. 633.]

Certificate of superintendent. Prima facie evidence, etc.

Sec. 14. If the expenses of the work and material for such improvements, after the completion thereof, and the delivery to said contractor of said certificate, be not paid to the contractor so employed, or his agent or assignee, on demand, the said contractor or his assignee, shall have the right to sue such owner, tenant, or occupant for the amount contracted to be paid; and said certificate of the superintendent of streets shall be prima facie evidence of the amount claimed for said work and materials, and of the right of the contractor to recover for the same in such action. Said certificate shall be recorded by the said superintendent of streets in a book kept by him in his office for that

purpose, properly indexed, and the sum contracted to be paid shall be a lien, the same as provided in section 9 of this act, and may be enforced in the same manner.

Penalties.

Sec. 15. In addition, and as cumulative to the remedies above given, the city council shall have power, by resolution or ordinance, to prescribe the penalties that shall be incurred by any owner or person liable, or neglecting, or refusing to make repairs when required, as provided in section 13 of this act, which fines and penalties shall be recovered for the use of the city by prosecution in the name of the people of the State of California, in the court having jurisdiction thereof, and may be applied, if deemed expedient by the said council, in the payment of the expenses of any such repairs not otherwise provided for.

Who deemed to be the owner.

Sec. 16. The person owning the fee, or the person in whom, on the day the action is commenced, appears the legal title to the lots and lands, by deeds duly recorded in the county recorder's office of each county, or the person in possession of lands, lots, or portions of lots or buildings under claim, or exercising acts of ownership over the same for himself, or as the executor, administrator, or guardian of the owner, shall be regarded, treated and deemed to be the "owner" (for the purpose of this law), according to the intent and meaning of that word as used in this act. And in case of property leased, the possession of the tenant or lessee holding and occupying under such persons shall be deemed to be the possession of such owner.

Tenants or lessees.

Sec. 17. Any tenant or lessee of the lands or lots liable may pay the amount assessed against the property of which he is the tenant or lessee under the provisions of this act, or he may pay the price agreed on to be paid under the provision of section 13 of this act, either before or after suit brought, together with costs, to the contractor, or his assigns, or he may redeem the property, if sold on execution or decree for the benefit of the owner, within the time prescribed by law, and deduct the amount so paid from the rents due and to become due from him, and for any sums so paid beyond the rents due from him, he shall have a lien upon and may retain possession of the said land and lots until the amount so paid and advanced be satisfied, with legal interest, from accruing rents, or by payment by the owner.

Records of superintendent of streets.

Sec. 18. The records kept by the superintendent of streets of said city, in conformity with the provisions of this act, and signed by him, shall have the same force and effect as other public records, and copies therefrom, duly certified, may be used in evidence with the same effect

as the originals. The said records shall, during all office hours, be open to the inspection of any citizen wishing to examine them, free of charge.

Notices, how served.

Sec. 19. Notices in writing which are required to be given by the superintendent of streets under the provisions of this act, may be served by any person with the permission of the superintendent of streets, and the fact of such service shall be verified by the oath of the person making it, taken before the superintendent of streets, who for that purpose and for all other purposes and in all cases where a verification is required under the provisions of this act is hereby authorized to administer oaths, or other person authorized to administer oaths, or such notices may be delivered to the superintendent of streets himself, who must also verify the service thereof, and who shall keep a record of the fact of giving such notices, when delivered by himself personally, and also of the notices and proof of service when delivered by any other person. [As amended, Statutes 1889, p. 170.]

City to keep streets in repair (repealed).

Sec. 20. [Repealed, Statutes 1911, p. 635.]

Superintendent shall keep office and direct clean sewers.

Sec. 21. The superintendent of streets shall keep a public office in some convenient place within the municipality, and such records as may be required by the provisions of this act. He shall superintend and direct the cleaning of all sewers, and the expense of the same shall be paid out of the street or sewer fund of said city.

Duties of superintendent and shall furnish bond.

Sec. 22. It shall be the duty of the superintendent of streets to see that the laws, ordinances, orders, and regulations relating to the public streets and highways be fully carried into execution, and that the penalties thereof are rigidly enforced. He shall keep himself informed of the condition of all of the public streets and highways, and also of all public buildings, parks, lots and grounds of said city, as may be prescribed by the city council. He shall, before entering upon the duties of his office, give bonds to the municipality, with such sureties and for such sums as may be required by the city council, and should he fail to see the laws, ordinances, orders, and regulations relative to the public streets or highways carried into execution, after notice from any citizen of a violation thereof, he and his sureties shall be liable upon his official bond to any person injured in his person or property in consequence of said official neglect.

City not liable for damages. Who liable.

Sec. 23. If, in consequence of any graded street or public highway improved under the provisions of this act being out of repair and in

condition to endanger persons or property passing thereon, any person while carefully using said street or public highway, and exercising ordinary care to avoid the danger, suffer damage to his person or property through any such defect therein, no recourse for damages thus suffered shall be had against such city; but if such defect in the street or public highway shall have existed for the period of twenty-four hours or more after notice thereof to the said superintendent of streets, then the person or persons on whom the law may have imposed the obligations to repair such defect in the street or public highway, and also the officer or officers through whose official negligence such defect remains unrepaired, shall be jointly and severally liable to the party injured for the damages sustained; provided, that said superintendent has the authority to make such repairs, under the direction of the city council, at the expense of the city.

City council may construct sewers and manholes, etc., and provide for cleaning same. Remonstrance.

Sec. 24. The city council of such city shall have full power and authority to construct sewers, gutters, and manholes, and provide for the cleaning of the same, and culverts or cesspools, or crosswalks or sidewalks, or any portion of any sidewalk upon or in any street, avenue, lane, alley, court, or place in such city; and also for drainage purposes, over or through any right of way obtained or granted for such purposes, with necessary and proper outlet or outlets to the same, of such materials, in such a manner, and upon such terms as it may be deemed proper. None of the work or improvements described in this section shall be stayed or prevented by any written or any other remonstrance or objection, unless such council deems proper. [As amended, Statutes 1893, p. 173.]

Duty of city council to repair and water. Street contingent fund. Work, how done.

Sec. 25. The city council may, in its discretion, repair and water streets that shall have been graded, curbed, and planked, paved or macadamized, and may build, repair and clean sewers, and shall provide a street contingent fund at the same time and in the same manner as other funds are provided out of which to pay the costs and expenses of making said repairs, and watering said streets, and building, repairing and cleaning said sewers; but whenever an unaccepted street or part of a street requires regrading, recurbing, repilling, repaving, replanking, regraveling, or remacadamizing, or requires new culverts, or new crosswalks, or new sidewalks, or new sewers, the work shall be advertised and let out by contract, and the costs and expenses thereof shall be assessed upon the property affected or benefited thereby, the same as in the first instance.

May designate what fund to be used. Remainder to be assessed proportionately.

Sec. 26. The city council may, in its discretion, order, by resolution, that the whole or any part of the cost and expenses of any of the work mentioned in this act be paid out of the treasury of the municipality from such fund as the council may designate. Whenever a part of such cost and expenses is so ordered to be paid, the superintendent of streets, in making up the assessment heretofore provided for such cost and expenses shall first deduct from the whole cost and expenses such part thereof as has been so ordered to be paid out of the municipal treasury, and shall assess the remainder of said cost and expenses proportionately upon the lots, parts of lots, and lands fronting on the streets where said work was done, or liable to be assessed for such work, and in the manner heretofore provided. [As amended, Statutes 1891, p. 206.]

PART II.

Sewers, construction of and assessment for.

Sec. 27. Whenever the city council deem it necessary to construct a sewer, then the said council may, in its discretion, determine to construct said sewer, and assess the cost and expenses thereof upon the property to be affected or benefited thereby, in such manner and within such assessment district as it shall prescribe, and the lien therefor upon said property shall be the same as is provided in section 9 of this act, or said council may determine to construct said sewer and pay therefor out of the street contingent fund.

Election to incur indebtedness. Tax to pay interest.

Sec. 28. If, at any time, the city council shall deem it necessary to incur any indebtedness for the construction of sewers, in excess of the money in the street contingent fund applicable to the construction of such sewers, they shall give notice of a special election by the qualified electors of the city, to be held to determine whether such indebtedness shall be incurred. Such notice shall specify the amount of indebtedness proposed to be incurred, the route and general character of the sewer or sewers to be constructed, and the amount of money necessary to be raised annually by taxation for an interest and sinking fund as hereinafter provided. Such notice shall be published for at least three weeks in some newspaper published in such city, and no other question or matter shall be submitted to the electors at such election. If upon a canvass of the votes cast at such election, it appears that not less than two-thirds of all the qualified electors voting at such election shall have voted in favor of incurring such indebtedness, it shall be the duty of the city council to pass an ordinance providing for the mode of creating such indebtedness and of paying the same; and in such ordinance provision shall be made for the levy and collection of an annual tax upon all the real and personal property,

subject to taxation, within such city, sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within a period of not more than twenty years from the time of contracting the same. It shall be the duty of the city council in each year thereafter, at the time when other taxes are levied to levy a tax sufficient for such purpose in addition to the taxes authorized to be levied for city purposes. Such tax, when collected, shall be kept in the treasury as a separate fund, to be inviolably appropriated to the payment of the principal and interest of such indebtedness.

Bonds.

Sec. 29. If bonds are issued under the provisions of the last section, said bonds shall be in sums of not less than one hundred dollars, nor more than one thousand dollars, shall be signed by the mayor and treasurer of the city, and the seal of the city shall be affixed thereto. Coupons for the interest shall be attached to each bond signed by the mayor and treasurer. Said bonds shall bear interest, to be affixed by the city council, at the rate of not to exceed five per cent per annum.

Bonds, sale of.

Sec. 30. Before the sale of said bonds, the council shall, at a regular meeting, by resolution, declare its intention to sell a specified amount of said bonds, and the day and hour of such sale, and shall cause such resolution to be entered in the minutes, and shall cause notice of such sale to be published for fifteen days in at least one newspaper published in the city in which the bonds are issued, and one published in the city and county of San Francisco, and in any other newspaper in the state at their discretion. The notice shall state that sealed proposals will be received by the council for the purchase of the bonds on the day and hour named in the resolution. The council, at the time appointed, shall open the proposals and award the purchase of the bonds to the highest bidder, but may reject all bids.

Bonds not sold for less than par.

Sec. 31. The council may sell said bonds at not less than par value, without the notice provided for in the preceding section.

Proceeds of sale of bonds deposited in city treasury. Sewer fund.

Sec. 32. The proceeds of the sale of the bonds shall be deposited in the city treasury to the account of the sewer fund, but no payment therefrom shall be made, except to pay for the construction of the sewer or sewers for the construction of which the bonds were issued, and upon the certificate of the superintendent of streets and the city engineer, that the work has been done according to the contract; provided, that after the completion of the sewers for the construction of which said bonds were issued, if there be any money of said fund

left in the treasury, the same may be transferred to the general fund for general purposes. [As amended, Statutes 1887, p. 148.]

Plans and specifications. Advertisements. Bids.

Sec. 33. Whenever said council shall determine to construct any sewer, and pay therefor out of the street contingent fund, or by the issuance of bonds, as above provided, then said council shall cause to be prepared plans and specifications of said work in sections, and shall advertise for twenty days in at least one newspaper published in the city in which the sewer is to be constructed, and one in the city and county of San Francisco, for sealed proposals for constructing said sewer. The work may be let in sections, and must be awarded to the lowest responsible bidder, the council having the right to reject any and all bids. The work shall be done and the materials furnished under the supervision and to the satisfaction of the superintendent of streets and the city engineer.

PART III.

City engineer to do surveying. Definitions.

Sec. 34. First. The city engineer, or where there is no city engineer, the county, or city and county surveyor, shall be the proper officer to do the surveying and other engineering work necessary to be done under this act, and to survey and measure the work to be done under contracts for grading and macadamizing streets, and to estimate the costs and expenses thereof; and every certificate signed by him in his official character shall be prima facie evidence in all courts in this state of the truth of its contents. He shall also keep a record of all surveys made under the provisions of this act, as in other cases. In all those cities where there is no city engineer the city council thereof is hereby authorized and empowered to appoint a suitable person to discharge the duties herein laid down as those of city engineer, and all the provisions hereof applicable to the city engineer, shall apply to such person so appointed. Said city council is hereby empowered to fix his compensation for such services.

Second. The words "work," "improve," "improved" and "improvement," as used in this act, shall include all work mentioned in this act, and also the construction, reconstruction and repairs of all or any portion of said work.

Third. The term "incidental expenses," as used in this act, shall include the compensation of the city engineer for work done by him; also the cost of printing and advertising, as provided in this act, and not otherwise; also the compensation of the person appointed by the superintendent of streets to take charge of and superintend any of the work mentioned in section 35 of this act; also the expenses of making the assessment for any work authorized by this act. All demands for incidental expenses mentioned in this subdivision shall be presented

to the street superintendent by itemized bill, duly verified by oath of the demandant.

Fourth. The notices, resolutions, orders or other matter required to be published by the provisions of this act, and of the act of which this is amendatory, shall be published in a daily newspaper, in cities where such there is, and where there is no daily newspaper, in a semi-weekly or weekly newspaper, to be designated by the council of such city, as often as the same is issued, and no other statute shall govern or be applicable to the publications herein provided for; provided, however, that only in case there is no daily, semi-weekly or weekly newspaper printed or circulated in any such city, then such notices, resolutions, orders or other matters as are herein required to be published in a newspaper, shall be posted and kept posted for the same length of time as required herein for the publication of the same in a daily, semi-weekly or weekly newspaper, in three of the most public places in such city. Proof of the publication or posting of any notice provided for herein shall be made by affidavit of the owner, publisher or clerk of the newspaper, or of the poster of the notice. No publication or notice, other than that provided for in this act, shall be necessary to give validity to any of the proceedings provided for therein.

Fifth. The word "municipality" and the word "city," as used in this act, shall be understood and so construed as to include, and is hereby declared to include, all corporations heretofore organized and now existing, and those hereafter organized, for municipal purposes.

Sixth. The words "paved" or "repaved," as used in this act, shall be held to mean and include pavement of stone, whether paving blocks or macadamizing, or of bituminous rock or asphalt, or of iron, wood or other material, whether patented or not, which the city council shall by ordinance adopt.

Seventh. The word "street," as used in this act, shall be deemed to, and is hereby declared to, include avenues, highways, lanes, alleys, crossings, or intersections, courts and places, and the term "main street" means such actually opened street or streets as bound a block; the word "blocks," whether regular or irregular, shall mean such blocks as are bounded by main streets, or partially by a boundary line of the city.

Eighth. The terms "street superintendent" and "superintendent of streets," as used in this act, shall be understood and so construed as to include, and are hereby declared to include, any person or officer whose duty it is, under the law, to have the care or charge of the streets, or the improvement thereof in any city. In all those cities where there is no street superintendent or superintendent of streets, the city council thereof is hereby authorized and empowered to appoint a suitable person to discharge the duties herein laid down as those of street superintendent or superintendent of streets; and all provisions hereof applicable to the street superintendent or superintendent of streets shall apply to such person so appointed.

Ninth. The term "city council" is hereby declared to include any

body or board which, under the law, is the legislative department of the government of any city.

Tenth. In municipalities in which there is no mayor, then the duties imposed upon said officer by the provisions of this act shall be performed by the president of the board of trustees, or other chief executive officer of the municipality.

Eleventh. The term "clerk" and "city clerk," as used in this act, is hereby declared to include any person or officer who shall be clerk of the said city council.

Twelfth. The term "quarter block," as used in this act as to irregular blocks, shall be deemed to include all lots or portions of lots having any frontage on either intersecting street half way from such intersection to the next main street, or, when no main street intervenes, all the way to a boundary line of the city.

Thirteenth. The term "one year," as used in this act, shall be deemed to include the time beginning with January first and ending with the thirty-first day of December of the same year.

Fourteenth. References in certain sections, by number, to certain other sections of "this act" refer to the number of the sections of the original act, as heretofore amended, unless it appears from the context that the reference is to the section of this amendatory act, when it shall be construed according to the context. [As amended, Statutes 1907, p. 1000.]

Superintendent of construction. Compensation.

Sec. 35. The superintendent of streets shall, when in his judgment it is necessary, appoint a suitable person to take charge of and superintend the construction and improvement of each and every sewer constructed or improved under the provisions of this act, and of piling and capping sidewalks, or of the paving of whatever character heretofore mentioned, in whole or in part, of one block or more, whose duty it shall be to see that the contract made for the doing of said work is strictly fulfilled in every respect, and in case of any departure therefrom to report the same to the superintendent of streets. Such person shall be allowed for his time actually employed in the discharge of his duties such compensation as shall be just, but not to exceed five dollars per day. The sum to which the party so employed shall be entitled shall be deemed to be incidental expenses, within the meaning of those words as defined by this act. [As amended, Statutes 1911, p. 634.]

Act repealed.

Sec. 36. The act entitled "An act to provide for the improvement of streets, lanes, alleys, courts, places and sidewalks, and the construction of sewers within municipalities," approved March sixth, eighteen hundred and eighty-three, is hereby repealed; provided, that any work or proceedings commenced thereunder prior to the passage of this act shall in nowise be affected hereby, but shall in all respects be finished and completed under said act of March sixth, eighteen hundred and

eighty-three, and said repeal shall in nowise affect said work or proceedings.

Time of taking effect on prior statutes or proceedings.

Sec. 37. That said act shall take effect and be in force immediately upon its passage, and all acts and parts of acts in conflict with this act are hereby repealed; and provided, however, that any work or proceeding of the city council commenced under the act of which this is amendatory shall in nowise be affected thereby, but shall in all respects be finished and completed thereunder. [As amended, Statutes 1893, p. 173.]

PART IV.

How changes of street grades are made.

Sec. 38. The city council is hereby empowered to change or modify the grade of any public street, lane, alley, place, or court, and to regrade or repave the same, so as to conform to such modified grade, in the manner as hereinafter provided. Before any change of grade is ordered the city council shall pass an ordinance or resolution of intention to make such change or modification of grade, and it shall have power at the same time and in the same ordinance or resolution to provide for the actual cost of performing the work of regrading, repaving, sewerage, sidewalking, or curbing of said street or portion of street, with the same or other material with which it was formerly graded, paved, sewered, sidewalked, or curbed; and that the cost of the same shall also be assessed upon the same district which is declared to be benefited by such changed or modified grade. One or more streets or blocks of streets may be embraced in the same ordinance or resolution. Such ordinance or resolution shall be published in the newspaper in which the official notices of the city council are usually printed and published; and such newspaper is to be designated in such ordinance or resolution. Such publication shall be made in every regular issue of such paper for not less than ten days, and shall describe the proposed change or modification of grade or regrading, and shall designate and establish the district to be benefited by such change or modification of grade or regrading, and to be assessed for the cost of the same. Within five days after the first publication of the ordinance or resolution of intention, the superintendent of streets shall cause to be conspicuously posted within the district designated in the ordinance or resolution, notice of the passage of said resolution. Said notices shall be the same in all requirements of contents and posting as the "notices of street work" provided for in section 3 of the original act to which this is amendatory. If no objection to said proposed change or changes, or modifications of grade, shall be filed with the clerk of the council within thirty days from the first publication of the ordinance or resolution of intention hereinbefore mentioned, the city council shall have power to declare such grades to be changed and established in conformity to said

ordinance or resolution; provided, that no change of an established grade shall be ordered except on petition of the owners of a majority of the property affected by the proposed change of grade. [As amended, Statutes 1893, p. 89.]

Petition showing damage through change of grade.

Sec. 39. Within thirty days after the first publication of said notice, any person owning property fronting upon said portions of the street or streets where such change of grade is made, may file a petition with the clerk of the city council showing the fact of such ownership, the description and situation of the property claimed to be damaged, its market value, and the estimated amount of damages over and above all benefits which the property would sustain by the proposed change if completed. Such petition shall be verified by the oath of the petitioners or their agents. [As amended, Statutes 1893, p. 90.]

Board of commissioners, who shall constitute.

Sec. 40. Whenever such petition or petitions have been filed, the mayor, surveyor, and superintendent of streets, of the city, or city and county, acting as a board of commissioners, shall assess the benefits, damages, and costs of the proposed change of grade upon each separate lot of land situated within such assessment district, as said lot appears of record upon the last city, or city and county assessment roll. [As amended, Statutes 1893, p. 90.]

Oath to be taken.

Sec. 41. The commissioners shall be sworn to make the assessments of benefits and damages to the best of their judgment and ability, without fear or favor. [As amended, Statutes 1893, p. 90.]

Witnesses may be subpoenaed.

Sec. 42. The commissioners shall have power to subpoena witnesses to appear before them to be examined under oath, which any one of said commissioners is authorized to administer. [As amended, Statutes 1893, p. 90.]

Damages to be assessed. Report to city council.

Sec. 43. The commissioners having determined the damage which would be sustained by each petitioner, in excess of all benefits, shall proceed to assess the total amount thereof, together with the costs, charges, and expenses of the proceedings, upon the several lots of land benefited within the district of assessment; so that each of the lots shall be assessed in accordance with its benefits caused by such work or improvement; and during the progress of their work shall make a report to such city council as often as it may be required. [As amended, Statutes 1893, p. 90.]

What report must contain. Majority report.

Sec. 44. The commissioners shall make their report, in writing, and shall subscribe to the same and file with the city council. In their said report they shall describe separately each piece of property which will sustain damage stating the amount of damages each will sustain over and above all benefits. They shall also give a brief description of each lot benefited within said assessment district, the name of the owner, if known, and the amount of benefits in excess of damages assessed against the same. In case the three commissioners do not agree, the award agreed upon by any two of them shall be sufficient. In designating the lots to be assessed, reference may be had to a diagram of the property in the district affected; such diagram to be attached to and made a part of the report of the commissioners. [As amended, Statutes 1893, p. 90.]

Unknown owners. Errors. Filing of report to be published.

Sec. 45. If in any case the commissioners find that conflicting claims of title exist, or shall be in ignorance or doubt of the ownership of any lot or land, or any improvement thereon, or any interest therein, it shall be set down as belonging to unknown owners. Error in the designation of the owner or owners of any land or improvements, or particulars of their interest, shall not affect the validity of the assessment. On the filing of said report, the clerk of said city council shall give notice of such filing by the publication of at least ten days in one or more daily newspapers published and circulated in said city; or if there be no daily newspaper, by three successive issues in a weekly, or semi-weekly newspaper so published and circulated; and said notice shall require all persons interested to show cause, if any, why such report should not be confirmed, before the city council, on a day to be fixed by the city council and stated in said notice, which day shall not be less than twenty days from the first publication thereof. [As amended, Statutes 1893, p. 91.]

Objections to be filed in writing. Hearing. New Assessment. Advertising for bids. Proceedings. Awards.

Sec. 46. All objections shall be in writing and filed with the clerk of the city council, who shall at the next meeting after the date fixed in the notice to show cause, lay the said objections, if any, before the council, which shall fix a time for hearing the same; of which time the clerk shall notify the objectors in the same manner as are notified objectors to the original resolution of intention. At the time set, or at such other time as the hearing may be adjourned, the city council shall hear such objections and pass upon the same, and at such time shall proceed to pass upon such report, and may confirm, correct, or modify the same, or may order the commissioners to make a new assessment, report, and plat, which shall be filed, notice given and had, as in the case of an original report. In case the ordinance or resolution of in-

tention also provides for the assessing upon the district the cost of regrading or repaving such street or streets to such changed or modified grade, after the report of the commissioners as to the damages caused by such change of grade has been passed upon by the city council, it shall then advertise for bids to perform the work of regrading, repaving, sewerage, sidewalking, or curbing such street or streets with the same or other material with which the same had been formerly graded, paved, sewerage, sidewalked, or curbed; first causing a notice, with specifications, to be posted conspicuously for five days on or near the council chamber door, inviting sealed proposals for bids for doing such work, and shall also cause notices of said work, inviting said proposals and referring to the specifications posted or on file, to be published two days in a daily, semi-weekly or weekly newspaper published and circulated in said city, and designated by the city council for that purpose, and in case there is no newspaper published in the city, then it shall be posted as provided in section 3 of the original act to which this is amendatory. All proposals or bids offered shall be accompanied by a check, payable to the order of the mayor of the city, and certified by a responsible bank for that amount, which shall not be less than ten per cent of the aggregate of the proposals; or by a bond for said amount, signed by the bidder and two sureties, who shall justify under oath in double said amount over and above all statutory exemptions. Said proposals or bids shall be delivered to the clerk of the said city council, and said council shall, in open session, examine and publicly declare the same; provided, however, that no proposal or bid shall be considered unless accompanied by a check or a bond satisfactory to the council. The city council may reject any and all bids, and may award the contract to the lowest responsible bidder, which award shall be approved by the mayor or the three-fourths vote of the city council. If not approved by the mayor or the three-fourths vote of the city council, the city council may readvertise for proposals or bids for the performance of the work, as in the first instance, and thereafter proceed in the manner in this section provided. All checks accompanying bids shall be held by the clerk until the bearer has entered into a contract, as herein provided; and in case he refuses so to do, then the amount of his certified check shall be declared forfeited to the city, and shall be collected and paid into its general fund, and all bonds so forfeited shall be prosecuted and the amount thereon collected paid into such fund. Notice of the awards of the contracts shall be published and posted in the same manner as hereinbefore provided for the posting of proposals for said work. [As amended, Statutes 1893, p. 91.]

City clerk to certify contract. Cost of work to be assessed.

Sec. 47. After such contract has been awarded and entered into, the clerk of the city council shall certify to the city council that fact, together with the total amount of the cost of the same, whereupon the

city council shall cause to be forwarded to the commissioners a copy of such certificate; whereupon such commissioners shall proceed to assess the cost of doing such work upon all the lots and land lying within the district to be assessed, distributing the same so that each lot will be assessed for its proportion of the same, according to the benefits it receives from the work, and in the same manner in which the damages caused by the change of grade were assessed upon the same. Such commissioners, in making such assessment, shall show the total amount for which each lot or tract is assessed, in excess of all benefits, for the total cost of changing and modifying the grade of the street, as well as the regrading, repaving, sewerage, sidewalking, and curbing of the same, and costs or damages connected therewith. The provisions of the act to which this is amendatory in regard to the mode or manner of the assessment of the cost of such work shall not apply to the work herein contemplated; neither shall the provisions of the same in regard to the issuing of bonds to represent the cost of the same, nor the provisions in regard to the right of protest against the work. [As amended, Statutes 1893, p. 92.]

City clerk to certify copy of report to superintendent of streets. Lien.

Sec. 48. The clerk of said city council shall forward to the street superintendent of the city a certified copy of the report, assessment, and plat, as finally confirmed and adopted by the city council. Such certified copy shall thereupon be the assessment roll, the cost of which shall be provided for by the commissioners, as a portion of the cost of the proceedings therein. Immediately upon receipt thereof by the street superintendent, the assessment therein contained shall become due and payable, and shall be a lien upon all the property contained or described therein. [As amended, Statutes 1893, p. 93.]

Notice that assessment due. Payment of. Delinquency. Publication. Sale. Deed. Redemption. Fund to be created by treasurer.

Sec. 49. The superintendent of streets shall thereupon give notice, by publication for ten days in one or more daily newspapers published and circulated in said city, or city and county, or two successive insertions in a weekly or semi-weekly newspaper so published and circulated, that he has received said assessment roll, and that all sums levied and assessed in said assessment roll are due and payable immediately, and that the payment of said sums is to be made to him within thirty days from the date of the first publication of said notice. Said notice shall also contain a statement that all assessments not paid before the expiration of said thirty days will be declared to be delinquent, and that thereafter the sum of five per cent upon the amount of such delinquent assessment, together with the cost of advertising each delinquent assessment, will be added thereto. When payment of any assessment is made to said superintendent of streets, he shall write the word "paid" and the date of payment opposite the respective assess-

ment so paid, and the name of the persons by or for whom said assessment is paid, and shall give a receipt therefor. On the expiration of said thirty days, all assessments then unpaid shall be and become delinquent, and said superintendent of streets shall certify such fact at the foot of said assessment roll, and shall add five per cent to the amount of each assessment so delinquent. The said superintendent of streets shall, within five days from the date of such delinquency, proceed to advertise the various sums delinquent, and the whole thereof, including the cost of advertising, which last shall not exceed the sum of fifty cents for each lot, piece, or parcel of land separately assessed, by the sale of the assessed property in the same manner as is or may be provided for the collection of state and county taxes; and after the date of said delinquency, and before the time of such sale herein provided for, no assessment shall be received, unless at the same time the five per cent added to as aforesaid, together with the costs of advertising then already incurred, shall be paid therewith. Said list of delinquent assessments, with a notice of the time and place of sale of the property affected thereby, shall be published daily for five days, in one or more daily newspapers published and circulated in such city, or by at least two insertions in a weekly newspaper so published and circulated before the day of sale for such delinquent assessment. Said time of sale must not be less than seven days from the date of the first publication of said delinquent assessment list, and the place must be in or in front of the office of said superintendent of streets. All property sold shall be subject to redemption for one year, and in the same manner as in sales for delinquent state and county taxes; and the superintendent of streets shall, if there is no redemption, make and deliver to the purchaser at such sale a deed conveying the property sold, and may collect for each certificate fifty cents, and for each deed one dollar. All provisions of the law in reference to the sale and redemption of property, for delinquent state and county taxes, in force at any given time, shall also then, as far as the same are not in conflict with the provisions of this act, be applicable to the sale and redemption of property for delinquent assessments hereunder, including the issuance of certificates and execution of deeds. The deed of the street superintendent, made after such sale, in case of failure to redeem, shall be prima facie evidence of the regularity of all proceedings hereunder, and of title in the grantee. The superintendent of streets shall from time to time pay over to the city treasurer all moneys collected by him on account of any such assessments. The city treasurer shall, upon receipt thereof, place the same in a separate fund, designating each fund by the name of the street, square, lane, alley, court, or place for the change of grade for which the assessment was made. Payments shall be made from said fund to the parties entitled thereto, upon warrants signed by the commissioners or a majority of them. [As amended, Statutes 1893, p. 93.]

How notice of payment of damages to be made.

Sec. 50. When sufficient money is in the hands of the city treasurer, in the fund voted for the proposed work or improvement, to pay the total cost for damages, as well as for the cost of doing the work, and all other expenses connected therewith, it shall be the duty of the commissioners to notify the owner, possessor, or occupant of the premises damaged, and to whom damages have been awarded, that a warrant has been drawn for the payment of the same, which can be received at the office of such commissioners. Such notification may be made by depositing a notice, postage paid, in the postoffice, addressed to his last known place of residence. If, after the expiration of three days after the service or deposit of the notice in the postoffice, he shall not have applied for such warrant, the same shall be drawn and deposited with the city treasurer, to be delivered to him upon demand. [As amended, Statutes 1893, p. 94.]

Condemnation of premises. Precedents of proceedings. Deficiency, how paid. Priority of warrants.

Sec. 51. If the owner of any premises damaged neglects or refuses, for ten days after the warrant has been placed in the hands of the city treasurer, subject to his demand, to accept the same, the city council may cause proceedings to be commenced, in the name of the city, to condemn said premises, as provided by law under the right of eminent domain. The ordinance or resolution of intention shall be conclusive evidence of the necessity of the same. Such proceedings shall have precedence, so far as the business of the court will permit, and any judgment for damages therein rendered shall be payable out of the special fund in the treasury for that purpose. At any time after the trial and judgment entered, or pending appeal, the court may order the city treasurer to set apart in the city treasury a sufficient sum from said fund to answer the judgment, and thereupon may authorize or order the municipality to proceed with the proposed work or improvements. In case of a deficiency in said fund to pay the whole assessed judgment and damages, the city council may, in its discretion, order the balance thereof to be paid out of the general fund of the treasury, or to be distributed by the commissioners over the property assessed by a supplementary assessment; but in the last named case, in order to avoid delay, the city council may advance such balance out of any available fund in the treasury, and reimburse the same from the collection of assessments. The treasurer shall pay such warrants in the order of their presentation; provided, that warrants for damages and for costs of performing the work shall have priority over warrants for charges and expenses, and the treasurer shall see that sufficient money remains in the fund to pay all warrants of the first class before paying any of the second. The provisions of section 1251 of the Code of Civil Procedure, requiring the payment of damages within thirty days after the entry of judgment, shall not apply to

damages rendered in proceedings under this act. [As amended, Statutes 1893, p. 95.]

Application of other provisions of original act. Work in progress to be continued. Ratification of subsequent proceedings.

Sec. 52. All other provisions contained in the act to which this is amendatory, and which provisions are not in conflict herewith, shall apply to all matters herein contained. All proceedings in any work or improvement, such as is provided for in this act, already commenced and now in progress under another act now in force, or by virtue of an ordinance or resolution of intention heretofore passed, may, from any stage of such proceedings already commenced and now in progress, be continued under this act by resolution of the city council. The said work or improvement may then be conducted under the provisions of this act, with full force and effect in all respects from the stage of such proceedings at and from which such resolution or ordinance shall declare the intention to have such work done or improvement cease under such other acts or ordinances and continued under this act; and from such election so made all proceedings theretofore had are hereby ratified, confirmed, and made valid, and it shall be unnecessary to renew or conduct over again any proceedings prior to the passage of this act. [As amended, Statutes 1893, p. 95.]

Act liberally construed.

Sec. 53. This act shall be liberally construed to the end that its purposes may be effected. No error, irregularity, informality, and no neglect or omission of any officer of the city, in any proceeding taken hereunder which does not directly affect the jurisdiction of the city council to order the work or improvement shall avoid or invalidate such proceeding or any assessment for the cost of work done thereunder. The exclusive remedy of any person affected or aggrieved thereby shall be by appeal to the city council as herein provided. [As amended, Statutes 1911, p. 634.]

Council to fix time and place of hearings.

Sec. 54. Whenever in proceedings hereunder the time and place for hearing by the city council is fixed and from any cause the hearing is not then and there held or regularly adjourned to a time and place fixed, the power of the city council in the premises shall not thereby be divested or lost. The city council may fix a time and place for the hearing and cause notice thereof to be given by publication by at least one insertion in a daily, semi-weekly or weekly newspaper published and circulated in said city and designated by the council for that purpose such publication to be at least five days before the date of the hearing, and thereupon the city council shall have power to act as in the first instance. [As amended, Statutes 1911, p. 634.]

Description by reference sufficient.

Sec. 55. In all resolutions, notices, orders and determinations subsequent to the resolution of intention a description of the assessment district by reference to the resolution of intention shall be sufficient, and in all resolutions, notices, orders, and determinations subsequent to the "notice of street work" a description of the work by reference to the resolution of intention shall be sufficient. [As amended, Statutes 1913, p. 412.]

City may become contractor. Proceedings.

Sec. 56. When the work prescribed by the resolution of intention is exclusively sidewalk or curbing work with or without such grading as is incidentally necessary to the doing of such sidewalk or curbing work, and no proposals or bids for doing the work are delivered to the clerk, as invited by the notice inviting the same, as provided for in section 5 of this act, the city council may, in its discretion, by a vote of three-fourths of its members in the affirmative, direct that a proposal or bid in the name and on the part of the city be filed, whereupon the contract for doing the work shall be awarded to the city, and the city shall thus be and become the "contractor" within the meaning of this act. And when the time has expired within which, as provided in said section 5 of this act, the owners may elect to take the contract, shall have expired, and such owners have not so elected, the city shall be deemed to have undertaken to do and complete the work, at the price named in such bid or proposal, within ninety days after the time when as aforesaid it is to be deemed to have undertaken the same, and to begin such work within fifteen days after said time. The city need not enter into a contract with the superintendent of streets, as provided in section 6 of this act, nor give any check or bond, either upon bidding or to secure the performance of the work or payment for labor or materials. The warrant provided for in section 9 of this act shall be delivered to the clerk of the city council, and such clerk is hereby authorized to make on the part of the city the demand provided for in section 10 of this act. Except as in this section expressly provided otherwise, all and singular the provisions of this act shall apply in the case where the city, under the provisions of this section, becomes the contractor, that is to say, undertakes to do the work. And all the rights, dues and remedies of the "contractor," under the provisions of this act, shall accrue to the city in its character of one undertaking to do the work, as provided in this section. [New section, Statutes 1909, p. 399.]

Public work in unincorporated territory. Terms interchangeable.

Sec. 57. The public work provided to be done under this act may be performed under the provisions of this act in unincorporated territory in counties, and all of the provisions of this act shall apply with equal force to such work subject to the definitions and modifications herein-

after contained. Wherever the words "municipality," "municipalities" or "city" shall appear in this act, they shall be and are hereby defined as including cities, cities and counties and counties, and are hereby expressly declared to be interchangeable with any or either of these terms. Wherever the terms "city council" or "council" shall appear in this act, they shall be and are hereby defined as including the board of supervisors of a county, and are hereby expressly declared to be interchangeable with these terms; and all of the provisions of this act extending authority to or imposing duties or obligations upon the city council or council shall apply with equal force to the board of supervisors. Wherever the term "city engineer" shall appear in this act, it shall be and is hereby defined as including the county surveyor of a county, and is hereby expressly declared to be interchangeable therewith; and all of the provisions of this act extending authority to or imposing duties or obligations upon the city engineer shall apply with equal force to the county surveyor. Wherever the terms "city clerk," "clerk of the city council," "clerk of the council," or "clerk" shall appear in this act, they shall be and are hereby defined as including the county clerk of a county, and are hereby expressly declared to be interchangeable therewith; and all of the provisions of this act extending authority to or imposing duties or obligations upon the city clerk, clerk of the city council, clerk of the council or clerk shall apply with equal force to the county clerk. Wherever the terms "city treasury" or "municipal treasury" shall appear in this act, they shall be and are hereby defined as including the county treasury, and are hereby expressly declared to be interchangeable with any or either of these terms. Wherever the terms "treasurer" or "city treasurer" shall appear in this act, they shall be and are hereby defined as including the county treasurer of a county, and are hereby expressly declared to be interchangeable therewith; and all of the provisions of this act extending authority to or imposing duties or obligations upon the treasurer or city treasurer shall apply with equal force to the county treasurer. Wherever the terms "mayor" or "mayor of said city" shall appear in this act, they shall be and are hereby defined as including the chairman of the board of supervisors of a county, and are expressly declared to be interchangeable therewith; and all of the provisions of this act extending authority to or imposing duties or obligations upon the mayor or mayor of said city shall apply with equal force to the chairman of the board of supervisors. [New section, Statutes 1913, p. 353.]

County street superintendent. Compensation.

Sec. 58. The board of supervisors of any county in which it is desired to perform work under the provisions of this act shall be and they are hereby authorized to appoint a person to be known as the street superintendent of the said county who shall have all of the authority to perform all of the duties and obligations herein imposed

upon the street superintendent, and shall be considered as designated wherever the words "street superintendent" or "superintendent of streets" are used in this act; and the board of supervisors may appoint as many deputies for the said street superintendent of the county as in their judgment may be proper and necessary, the said street superintendent to receive a compensation of six dollars per day and his deputies to receive a compensation of four dollars per day for their time actually expended. The office of the street superintendent shall be the office of the county surveyor, and, at any time when no work is actually being conducted under the provisions of this act, or when the street superintendent shall not be in his office, the county surveyor shall have charge of the records in the street superintendent's office and perform such duties as are herein imposed upon the street superintendent, and have such other authority as is herein granted to the street superintendent; and all of the provisions of this act extending authority to or imposing duties or obligations upon the street superintendent or superintendent of streets shall apply with equal force to the superintendent of streets appointed by the board of supervisors. [New section, Statutes 1913, p. 354.]

Phraseology of bonds changed.

Sec. 59. In any bonds provided to be issued under the terms of this act, the phraseology of the said bonds shall be changed to conform to the designation of a county instead of city, and the officers hereinbefore mentioned on the part of the county shall be and they are hereby authorized to perform all of the duties herein by the provisions of this act or the provisions of the said bond specified to be performed. [New section, Statutes 1913, p. 354.]

Payment from general fund.

Sec. 60. If the board of supervisors shall determine that the whole or any part of the cost and expenses of the work mentioned in this act shall be paid out of the treasury of the county, such payment, or any part of the same, may be made from the general fund of the county or general road fund of the county, or from the road district fund of the road district in which the said improvement shall be constructed. [New section, Statutes 1913, p. 355.]

Highway lighting system. Ordinance to describe district. Tax for maintenance.

Sec. 61. If any public highway lighting system shall be installed under the provisions of this act, the board of supervisors may, by ordinance, provide, at any time before, after or during the proceedings under this act, that the cost of maintaining the said public highway lighting system, including the cost of necessary repairs, replacements, fuel, current, care and other items of like nature, shall be paid, either partly or wholly, by the district upon which the assessment shall be

levied to pay the cost of the installation of the same. The ordinance shall contain a description of the district to be assessed to pay for the installation of the said lighting system and to be assessed to pay for the maintenance thereof, and also shall contain a designation or name of the said district by which it may be referred to in all subsequent proceedings, and a copy of the said ordinance shall be filed in the office of the county assessor. The county assessor shall thereafter, in making up the assessment roll, segregate the property included within the district described in the said ordinance on the assessment roll under the designation contained in the said ordinance. The board of supervisors shall thereafter, in each year prior to the time of fixing the county tax rate, estimate the cost of maintaining the said public highway lighting system during the ensuing year, and shall decide whether or not the cost of the same shall be borne wholly or partially by the said assessment district, and shall, in addition to all other taxes, fix a special tax rate for the property within said assessment district sufficient to raise an amount of money to cover all of the portion of the expense of maintaining the said public highway lighting system to be borne by said district as the board of supervisors may determine. [New section, Statutes 1913, p. 355.]

Names for roads.

Sec. 62. The board of supervisors of any county are hereby authorized by ordinance to adopt a name for any road, highway, avenue or other public way in the county for which a name has not been provided under the provisions of section 2636 of the Political Code, and are hereby authorized by ordinance to establish the official grade of any road, highway, avenue or other public way in the county for which no official grade has theretofore been established by ordinance. [New section, Statutes 1913, p. 355.]

STREET OPENING ACT OF 1889

An act to provide for laying out, opening, extending, widening, straightening, or closing up in whole or in part any street, square, lane, alley, court or place within municipalities, and to condemn and acquire any and all land and property necessary or convenient for that purpose.

(Approved March 6, 1889. Stats. 1889, p. 70.)

Amended 1909, p. 1034; 1913, p. 376; 1919, p. 464.

Repealed as to cities over forty thousand, Stats. 1893, p. 220.

1. **Laying out, opening, closing, etc., streets, lanes, alleys, etc.** Whenever the public interest or convenience may require, the city council of any municipality shall have full power and authority to order the opening, extending, widening, straightening, or closing up in whole or in part of any street, square, lane, alley, court, or place within the bounds of such city, and to condemn and acquire any and all land and property necessary or convenient for that purpose.

2. **Resolution of council declaring intention to perform street work.** Before ordering any work to be done or improvement made which is authorized by section 1 of this act, the city council shall pass a resolution declaring its intention to do so, describing the work or improvement, and the land deemed necessary to be taken therefor, and specifying the exterior boundaries of the district of lands to be affected or benefited by said work or improvement, and to be assessed to pay the damages, cost, and expenses thereof.

3. **Street superintendent to post notice.** The street superintendent shall then cause to be conspicuously posted along the line of said contemplated work or improvement, at not more than three hundred feet in distance apart, but not less than three in all, notices of the passage of said resolution. Said notice shall be headed "Notice of Public Works," in letters not less than one inch in length, shall be in legible characters, state the fact of passage of the resolution, its date, and briefly, the work or improvement proposed, and refer to the resolution for further particulars. He shall also cause a notice, similar in substance, to be published for a period of ten days in one or more daily newspapers published and circulated in said city, and designated by said city council; or if there is no daily newspaper so published and circulated in said city, then by four successive insertions in a weekly or semi-weekly newspaper, so published, circulated, and designated.

4. **Interested person may file objections.** Any person interested objecting to said work or improvement, or to the extent of the district of lands to be affected or benefited by said work or improvement, and to be assessed to pay the cost and expenses thereof, may make written objections to the same within ten days after the expiration of the time of the publication of said notice, which objection shall be delivered to the clerk of the city council, who shall indorse thereon the date of its reception by him, and at the next meeting of the city council after the expiration of said ten days lay said objections before said city council, which shall fix a time for hearing said objections, not less than one week thereafter. The city clerk shall thereupon notify the persons making such objections, by depositing a notice thereof in the postoffice of said city, postage prepaid, addressed to such objector.

5. **Decision of council to be final.** At the time specified or to which the hearing may be adjourned, the said city council shall hear the objections urged, and pass upon the same, and its decision shall be final and conclusive. If such objections are sustained, all proceedings shall be stopped, but proceedings may be again commenced at any time by giving notice of intention to do said work or make said improvement. If such objection is overruled by the city council, the proceedings shall continue the same as if such objection had not been made. At the expiration of the time prescribed during which objections to said work or improvement may be made, if no objection shall have been made, or if an objection shall have been made, and said council, after hearing, shall have overruled the same, the city council shall be deemed to have acquired jurisdiction to order any of the work to be done, or improvements to be made, which is authorized by section 1 of this act.

6. **Jurisdiction.** Having acquired jurisdiction as provided in the preceding section, the city council shall order said work to be done, and unless the proposed work is for closing up, and it appears that no assessment is necessary, shall appoint three commissioners to assess benefits and damages, and have general supervision of the proposed work or improvement until the completion thereof in compliance with this statute. For their services, they shall receive such compensation as the city council may determine from time to time; provided, that such compensation shall not exceed two hundred dollars per month each, nor continue more than six months, unless extended by order of the city council. Such compensation shall be added to and be chargeable as a part of the expenses of the work or improvement. Each of said commissioners shall file with the clerk of the city council an affidavit, and a bond to the State of California, in the sum of five thousand dollars, to faithfully perform the duties of his office. The city council may at any time remove any or all of said commissioners for cause, upon reasonable notice and hearing, and may fill any vacancies occurring among them for any cause.

7. **Commissioners to employ assistance.** Said commissioners shall have power to employ such assistance, legal or otherwise, as they may deem necessary and proper; also to rent an office, and provide such maps, diagrams, plans, books, stationery, fuel, lights, postage, expressage and incur such incidental expenses as they may deem necessary.

8. **Expenses to be a charge upon the particular work required.** All such charges and expenses shall be deemed as expenses of said work or improvement, and be a charge only upon the lands devoted to the particular work or improvement, as provided hereinafter. All payments, as well for the land and improvements taken or damaged, as for the charges and expenses, shall be paid by the city treasurer, upon warrants drawn upon said fund from time to time, signed by said commissioners, or a majority of them. All such warrants shall state whether they are issued for land or improvements taken or damaged, or for charges and expenses, and that the demand is payable only out of the money in said fund, and in no event shall the city be liable for the failure to collect any assessment made by virtue hereof, nor shall said warrant be payable out of any other fund, nor (be) a claim against the city.

9. **Assessment for damages.** Said commissioners shall proceed to view the lands described in the resolution of intention, and may examine witnesses on oath to be administered by any one of them. Having viewed the land to be taken, and the improvements affected, and considered the testimony presented, they shall proceed, with all diligence, to determine the value of the land, and the damage to improvements and property affected, and also the amount of the expenses incident to said work or improvement, and having determined the same shall proceed to assess the same upon the district of lands declared benefited, the exterior boundaries of which were fixed by the resolution of intention provided for by section 2 hereof. Such assessment shall be made upon the lands within said district in proportion to the benefit to be derived from said work or improvement, so far as the said commissioners can reasonably estimate the same, including in such estimate the real property of any railroad company within said district, if such there be, and may also include in such estimate any or all public property within said district. (Amendment approved April 21, 1909. Stats. 1909, p. 1034. In effect immediately.)

10. **Report to council accompanied with a plat of the assessment district.** Said commissioners having made their assessment of benefits and damage, shall, with all diligence, make a written report thereof to the city council, and shall accompany their report with a plat of the assessment district showing the land taken or to be taken for the work or improvement, and the lands assessed, showing the relative location of each district, block, lot, or portion of lot, and its dimensions, so far as the commissioners can reasonably ascertain the same. Each block

and lot, or portion of lot, taken or assessed, shall be designated and described in said plat by an appropriate number, and a reference to it by such descriptive number shall be a sufficient description of it in any suit entered to condemn, and in all respects. When the report and plat are approved by the city council, a copy of said plat, appropriately designated, shall be filed by the clerk thereof in the office of the recorder of the county.

11. **Report, what must specify.** Said report shall specify each lot, subdivision, or piece of property taken or injured by the widening or other improvement, or assessed therefor, together with the name of the owner or claimants thereof, or of persons interested therein as lessees, encumbrancers, or otherwise, so far as the same are known to such commissioners, and the particulars of their interest, so far as the same can be ascertained, and the amount of value or damage, or the amount assessed, as the case may be.

12. **When set down to unknown owners.** If in any case the commissioners find that conflicting claims of title exist, or shall be in ignorance or doubt as to the ownership of any lot of land, or of any improvements thereon, or of any interest therein, it shall be set down as belonging to unknown owners. Error in the designation of the owner or owners of any land or improvements, or of the particulars of their interest, shall not affect the validity of the assessment or of the condemnation of the property to be taken.

13. **Filing of report and plat, and publication of.** Said report and plat shall be filed in the clerk's office of the city council, and thereupon the clerk of said city council shall give notice of such filing by publication for at least ten days in one or more daily newspapers published and circulated in said city; or if there be no daily paper, by three successive insertions in a weekly or semi-weekly newspaper so published and circulated. Said notice shall also require all persons interested to show cause, if any, why such report should not be confirmed, before the city council on or before a day fixed by the clerk thereof, and stated in said notice, which day shall not be less than thirty days from the first publication thereof.

14. **Objections must be in writing.** All objections shall be in writing, and filed with the clerk of the city council, who shall, at the next meeting after the day fixed in the notice to show cause, lay the said objections, if any, before the city council, which shall fix a time for hearing the same, of which the clerk shall notify the objectors in the same manner as objectors to the original resolution of intention; at the time set, or at such other time as the hearing may be adjourned to, the city council shall hear such objections and pass upon the same; and at such time, or, if there be no objections, at the first meeting after the day set in such order to show cause, or such other time as may be fixed,

shall proceed to pass upon such report, and may confirm, correct, or modify the same, or may order the commissioners to make a new assessment, report, and plat, which shall be filed, notice given, and hearing had, as in the case of an original report.

15. **Duty of clerk of council.** The clerk of said city council shall forward to the street superintendent of the city a certified copy of the report, assessment, and plat, as finally confirmed and adopted by the city council. Such certified copy shall thereupon be the assessment-roll. Immediately upon receipt thereof by the street superintendent, the assessment therein contained shall become due and payable, and shall be a lien upon all the property contained or described therein.

16. **Duty of superintendent of streets on receiving certified copy of report as confirmed by council.** The superintendent of streets shall thereupon give notice by publication for ten days in one or more daily newspapers published and circulated in such city or city and county, or by two successive insertions in a weekly or semi-weekly newspaper so published and circulated, that he has received said assessment-roll, and that all sums levied and assessed in said assessment-roll are due and payable immediately, and that the payment of said sums is to be made to him within thirty days from the date of the first publication of said notice. Said notice shall also contain a statement that all assessments not paid before the expiration of said thirty days will be declared to be delinquent, and that thereafter the sum of five per cent upon the amount of each delinquent assessment, together with the cost of advertising each delinquent assessment, will be added thereto. When payment of any assessment is made to said superintendent of streets, he shall write the word "Paid," and the date of the payment, opposite the respective assessment so paid, and the names of persons by or for whom said assessment is paid, and shall, if so required, give a receipt therefor. On the expiration of said thirty days, all assessments then unpaid shall be and become delinquent, and said superintendent of streets shall certify such fact at the foot of said assessment-roll, and shall add five per cent to the amount of each assessment so delinquent. The said superintendent of streets shall, within five days from the date of said delinquency, proceed to advertise and collect the various sums delinquent, and the whole thereof, including the cost of advertising, which last shall not exceed the sum of fifty cents for each lot, piece, or parcel of land separately assessed, by the sale of the assessed property in the same manner as is or may be provided for the collection of state and county taxes; and after the date of said delinquency, and before the time of such sale herein provided for, no assessment shall be received unless at the same time the five per cent added thereto, as aforesaid, together with the costs of advertising then already incurred, shall be paid therewith. Said list of delinquent assessments shall be published daily for five days in one or more daily newspapers published and circulated in such city, or by at least one insertion in a weekly newspaper

so published and circulated, before the day of sale of such delinquent assessment. Said time of sale must not be less than seven days from the date of the first publication of said delinquent assessment-list, and the place must be in or in front of the office of said superintendent of streets. All property sold shall be subject to redemption in the same time and manner as in sales for delinquent state and county taxes; and the superintendent of streets may collect for each certificate fifty cents, and for each deed one dollar. All provisions of the law, in reference to the sale and redemption of property for delinquent state and county taxes in force at any given time, shall also then, so far as the same are not in conflict with the provisions of this act, be applicable to the sale and redemption of property for delinquent assessments hereunder, including the issuance of certificates and execution of deeds. The deed of the street superintendent made after such sale, in case of failure to redeem, shall be prima facie evidence of the regularity of all proceedings hereunder, and of title in the grantee. It shall be conclusive evidence of the necessity of taking or damaging the lands taken or damaged, and the correctness of the compensation awarded therefor. The superintendent of streets shall, from time to time, pay over to the city treasurer all moneys collected by him on account of any such assessments. The city treasurer shall, upon receipt thereof, place the same in a separate fund, designating such fund by the name of the street, square, lane, alley, court, or place for the widening, opening, or other improvement of which such assessment was made. Payments shall be made from said fund to the parties entitled thereto, upon warrants signed by the commissioners, or a majority of them.

17. Payments for land and improvements, when and how made. When sufficient money is in the hands of the city treasurer, in the fund devoted to the proposed work or improvement, to pay for the land and improvements taken or damaged, and when in the discretion of the commissioners, or a majority of them, the time shall have come to make payments, it shall be the duty of the commissioners to notify the owner, possessor, or occupant of any land or improvement thereon to whom damages shall have been awarded, that a warrant has been drawn for the payment of the same, and that he can receive such warrant at the office of such commissioners upon tendering a conveyance of any property to be taken; such notification, except in the case of unknown owners, to be made by depositing a notice, postage paid, in the postoffice, addressed to his last known place of abode or residence. If at the expiration of thirty days after the deposit of such notice, he should not have applied for such warrant, and tendered a conveyance of the land to be taken, the warrant so drawn shall be deposited with the county treasurer, and shall be delivered to such owner, possessor, or occupant, upon tendering a conveyance as aforesaid, unless judgment of condemnation shall be had, when the same shall be canceled.

18. **Proceedings to condemn on refusal to accept payment.** If any owner of land to be taken neglects or refuses to accept the warrant drawn in his favor, as aforesaid, or objects to the report as to the necessity of taking his land, the commissioners, with the approval of the city council, may cause proceedings to be taken for the condemnation thereof, as provided by law under the right of eminent domain. The complaint may aver that it is necessary for the city to take or damage and condemn the said lands, or an easement therein, as the case may be, without setting forth the proceedings herein provided for, and the resolution and ordinance ordering said work to be done shall be conclusive evidence of such necessity. Such proceedings shall be brought in the name of the municipality, and have precedence so far as the business of the court will permit; and any judgment for damages therein rendered shall be payable out of such portion of the special fund as may remain in the treasury, so far as the same can be applied. At any time after trial and judgment entered, or preceding an appeal, the court may order the city treasurer to set apart in the city treasury a sufficient sum from the fund appropriated to the particular improvement to answer the judgment and all damages, and thereupon may authorize and order the municipality to enter upon the land and proceed with the proposed work and improvement. In case of a deficiency in said fund to pay the whole of such judgment and damages, the city council may, in their discretion, order the balance thereof to be paid out of the general fund of the treasury or to be distributed by the commissioners over the property assessed by a supplementary assessment; but in the last-named case, in order to avoid delay, the city council may advance such balance out of any appropriate fund in the treasury, and reimburse the same from the collections of the assessment. Pending the collection and payment of the amount of the judgment and damages, the court may order such stay of proceedings as may be necessary.

19. **Duty of treasurer on payment of warrants.** The treasurer shall pay such warrants out of the appropriate fund, and not otherwise, in the order of their presentation; provided, that warrants for land or improvements taken or damaged shall have priority over warrants for charges and expenses, and the treasurer shall see that sufficient money is and remains in the fund to pay all warrants of the first class before paying any of the second.

20. **Supplementary assessment to meet delinquency. Pro rata dividend.** If after the sale of the property for delinquent assessments there should be a deficiency, and there should be unreasonable delay in collecting the same, or if for the purpose of equalizing the assessments supplying a deficiency, or for any cause it appear desirable, the commissioners may so report to the city council, who may order them to make a supplementary assessment and report the same in manner and form as the original, and subject to the same procedure. If by reason

of such supplementary assessment, or for any cause, a surplus should remain after all claims against the improvement fund have been paid, the city council may appropriate said surplus and declare a dividend pro rata to the parties paying the same, and they, upon demand, shall have the right to have the amount of such pro rata dividends refunded to them, or credited upon any subsequent assessments for taxes made against said parties in favor of said city; provided, the city council may appropriate and transfer the said surplus to the general fund of the fiscal year in which the surplus exists, if said surplus does not exceed five per cent of the total amount expended out of the improvement fund; and, provided, further, that said surplus so transferred shall in no case exceed one thousand dollars.

(Amendment approved June 3, 1913. Stats. 1913, p. 377. In effect August 10, 1913.)

21. Proceedings to settle defective title. If any title attempted to be acquired by virtue of this act shall be found to be defective from any cause, the city council may again institute proceedings to acquire the cause as in this act provided, or otherwise, or may authorize the commissioners to purchase the same and include the cost thereof in a supplementary assessment as provided in the last section.

22. Proceedings when boundaries of districts of lands affect the whole city. If the city council deem it proper that the boundaries of the districts of lands to be affected and assessed to pay the whole or any portion of the damages, cost and expenses of any work or improvement under this act, shall include the whole city, then the commissioners appointed shall proceed in a summary manner to purchase the lands to be taken or condemned from the owners and claimants thereof. If said commissioners and the owners and claimants can not agree upon the price to be paid for said lands, they shall proceed to view and value the same, and shall thereupon make a summary report to the city council. Upon final confirmation of the report, the city council, if there be not sufficient money available in the city treasury, shall cause the whole or any such portion of the cost and expenses of the contemplated public improvement to be assessed upon the whole of the taxable property of said city, and to be included in and form part of the next general assessment roll of said city, and with like effect in all respects as if the same formed a part of the city, state and county taxes; and when the same shall have been collected the said city council shall cause the land required to be paid for or the value thereof tendered, and the said contemplated public improvement to be forthwith made and completed. All the provisions of the preceding sections not in conflict with this section shall be applicable thereto.

(Amendment approved May 8, 1919. Stats. 1919, p. 464. In effect July 22, 1919.)

23. Use of words "work" and "improvement." 1. The words "work" and "improvement," as used in this act, shall include all work mentioned in section 1 of this act.

2. Notices to be posted when publication cannot be had. In case there is no daily or weekly or semi-weekly newspaper printed and circulated in the city, then such notices as are herein required to be published in a newspaper shall be posted and kept posted for the length of time required herein for the publication of the same in a weekly newspaper, in three of the most public places in such city. Proof of the publication or posting of any notice provided for herein shall be made by affidavit of the owner, publisher or clerk of the newspaper or of the poster of the notice.

3. Construction of words "municipality" and "city." The word "municipality" and the word "city" shall be understood and so construed as to include all corporations heretofore organized and now existing, or hereafter organized, for municipal purposes.

4. Construction of terms "street superintendent" and "superintendent of streets." The terms "street superintendent" and "superintendent of streets," as used in this act, shall be understood and so construed as to include, and are hereby declared to include any person or officer whose duty it is, under the law, to have the care or charge of the streets, or the improvement thereof, in any city. In all those cities where there is no street superintendent or superintendent of streets, the city council thereof is hereby authorized and empowered to appoint a suitable person to discharge the duties herein laid down as those of street superintendent or superintendent of streets; and all the provisions hereof applicable to the street superintendent or superintendent of streets shall apply to such person so appointed.

5. Construction of term "city council." The term "city council" is hereby declared to include any body or board which, under the law, is the legislative department of the government of any city.

6. Construction of terms "clerk" and "city clerk." The terms "clerk" and "city clerk," as used in this act, are hereby declared to include any person or officer who shall be clerk of said city council.

7. Construction of terms "treasurer" and "city treasurer." The term "treasurer" or "city treasurer," as used in this act, shall include any person or officer who shall have charge and make payment of the city funds.

8. Publications or notice. No publications or notice other than that provided for in this act shall be necessary to give validity to any proceedings had thereunder.

24. Proceedings commenced before passage of this act to be continued by resolution of council. The proceedings in any work or improvement, such as is provided for in this act, already commenced, and now progressing under any other act now in force, or by virtue of any

ordinance passed by any city council or board of supervisors of any city, county, or city and county, by virtue of any other act now in force, may, from any stage of such proceedings already commenced and now progressing, be continued under this act by resolution of the city council. The said work or improvement may then be conducted under the provisions of this act with full force and effect in all respects, from the stage of such proceedings under such other acts or ordinances at and from which such resolution shall declare an election or intention to have said work of improvement cease under such other act or ordinance, and continue under this act; and from such election so made, all proceedings theretofore had under such other act or ordinance are hereby ratified, confirmed, and made valid, and it shall be unnecessary to renew or conduct over again proceedings had under such other act or ordinance. This section shall not apply to any work or improvement, proceedings in which were commenced more than eighteen months prior to the passage of this act.

25. **Act to be liberally construed.** The provisions of this act shall be liberally construed to promote the objects thereof. This act shall take effect and be in force from and after its passage.

CHANGE OF GRADE ACT OF 1909

An act to provide for changing or modifying the grade of public streets, lanes, alleys, courts, or other places, within municipalities.

(Approved April 21, 1909. Stats. 1909, p. 1018.)

Amended 1911, Stats. 1911, p. 854.

City council empowered to change grades.

1. The city council of any city is hereby empowered to change or modify the grade of public streets, lanes, alleys, courts, or other places therein, in the manner hereinafter provided.

Resolution of intention. Publication and posting of notices.

2. Before any change or modification of grade is ordered, the city council shall pass an ordinance or resolution of intention to order such change or modification of grade. Said ordinance or resolution of intention shall state the name of, or otherwise designate the public street, lane, alley, court or other place the grade of which, or any portion thereof, is proposed to be changed or modified, and shall set forth the change or modification of grade proposed to be made. One or more public streets, alleys, lanes, courts, or other places, or portions thereof, may be included in the same ordinance or resolution of intention. Said ordinance or resolution of intention shall be posted conspicuously for two days on or near the chamber door of said city council, and published by two insertions in a daily or weekly newspaper published and circulated in said city, and designated by said council for that purpose. If no such newspaper is published and circulated in said city, such ordinance or resolution of intention shall be posted for two days on or near the council chamber door, and in two other public places in said city. The street superintendent shall thereupon cause to be conspicuously posted along all public streets, lanes, alleys, courts, or other places, or portions thereof designated in the said ordinance or resolution of intention, where such change or modification of grade is proposed to be made, at not more than one hundred feet in distance apart, notices, but not less than three in all, of the passage of said ordinance or resolution of intention. Said notice shall be headed "Notice of Change of Grade," in letters of not less than one inch in length, and shall in legible characters state the fact of the passage of the said ordinance or resolution of intention, its date, the name or other designation of the public street, lane, alley, court, or other place, or portion thereof, the grade of which is proposed to be changed or modified, and shall refer to the ordinance or resolution of intention for further particulars. He shall also cause a notice similar in substance to be published for six days in a daily newspaper published and circulated in said city, and designated by said city council for that purpose, or in cities where there is no daily newspaper, by two insertions in a weekly newspaper so published, circulated

and designated. In case there is no daily or weekly newspaper published in said city, said notice shall be posted for six days on or near the chamber door of said council, and in two other public places in said city.

Property owners may protest. Hearing of protest.

3. Any person or persons owning any real property fronting upon any public street, lane, alley, court or other place, or portion thereof, where such change or modification of grade is proposed to be made, may, within thirty days after the first publication of the notice of the passage of the ordinance or resolution of intention, or within thirty days after the first posting thereof, where no publication thereof is made, as hereinbefore provided, file a written protest with the clerk of the city council against such proposed change or modification of grade. Every such protest must contain a description of the property owned by each signer thereof, sufficient to identify the same, and if signed by more than one person, must be accompanied by the affidavit of one of the signers that each signature thereto is the genuine signature of the person whose name purports to be thereto subscribed; and in case any signature is made by an agent, there must be attached to the protest the affidavit of the agent that he is duly authorized to sign such protest. Any protest not complying with the foregoing requirements shall not be considered by said city council. The clerk of the city council shall indorse on every such protest the date of its reception by him; and at the next regular meeting of the city council after the expiration of the time for filing protests, shall present to said city council all protests so filed with him. If the city council finds that such protests are signed by the owners of a majority of the frontage of the property fronting on the public street, lane, alley, court, or other place, or portion thereof where such change or modification of grade is proposed to be made, all further proceedings under said ordinance or resolution of intention shall be stayed and barred for six months from and after the filing of such majority protests, except as hereinafter provided, unless the owners of a majority of such frontage shall in the meantime petition the same change or modification of grade to be made; but a new ordinance or resolution of intention to make a different change or modification of grade of such public street, lane, alley, court, or portion thereof, may be passed at any time.

In the event that the ordinance or resolution of intention designates any public street, lane, alley, court or other place, or portion thereof, the grade of which is proposed to be changed or modified, and there be included in said ordinance or resolution of intention any other public street, lane, alley, court or other place, or portion thereof, intersecting therewith or terminating therein, the grade of which is also proposed to be changed or modified, the change or modification of grade of such public street, lane, alley, court or other place, and of such other public street, lane, alley, court or other place or portion thereof, so

intersecting or terminating, shall not be stayed or barred by any protests, made and filed as hereinbefore provided, unless such protest be signed by the owners of a majority of the total frontage of the property fronting on all such public streets, lanes, alleys, courts or other places, or portions thereof, where such change or modification of grade is proposed to be made. If the city council finds that such protests are not signed by the owners of a majority of the property fronting on the public street, lane, alley, court or other place, or portion thereof, where such change or modification of grade is proposed to be made, or if the proposed change or modification of grade extends for a distance of not more than one block, and the grade of such public street, lane, alley, court, or other place, for at least one block thereof immediately adjacent to such block where such change or modification of grade is proposed to be made, on each side thereof, has already been established, or if the proposed change or modification of grade extends for a distance of not more than one block, at the end of a public street, lane, alley, court or place, and the grade thereof for at least one block thereof immediately adjacent to such block has already been established, the city council shall thereupon fix a time for hearing such protests not less than ten days after the meeting of the council at which such time is so fixed and shall cause notice of the time and place of such hearing to be published for two days in a daily newspaper published and circulated in said city, or by one insertion in a weekly newspaper so published and circulated; and if no daily or weekly newspaper be published and circulated in said city, then said notice shall be posted for two days on or near the council chamber door, and in two other public places in said city; and such publication or posting shall be completed at least five days before such hearing. The city council shall hear said protests at the time and place appointed, or at any time to which the hearing thereof may be continued, and pass upon the same, and its decision thereon shall be final and conclusive. If such protests are sustained, no further proceedings shall be had under said ordinance or resolution of intention but a new ordinance or resolution of intention to make the same, or a different change or modification of grade may be passed at any time. If such protests are denied, the proceedings shall continue as if such protests had not been filed.

If no protests filed. Action of city council.

4. If no protests are filed within the time hereinbefore provided, or if protests are filed, and after hearing are denied, as herein provided, the city council shall acquire jurisdiction to order the change or modification of grade described in the ordinance or resolution of intention to be made. Having acquired such jurisdiction, the city council shall by ordinance or resolution, order the change or modification of grade to be made as proposed by and described in the ordinance or resolution of intention. Said ordinance or resolution ordering the change or modification of grade shall be published by two insertions in a daily, or by

one insertion in a weekly newspaper published and circulated in said city; or, if no such newspaper be published and circulated therein, the same shall be posted for two days on or near the council chamber door, and in two other public places in said city.

Who deemed to be owner. Work on one side of street.

5. Except as otherwise hereinafter provided the person owning the fee, or the person in whom on the day any protest or petition is filed the legal title to real property appears, by deeds duly recorded in the county recorder's office of the county in which said city is situated, shall be deemed to be the owner thereof for the purpose of this act; provided, however, that any person in possession of real property as the executor, administrator, trustee, guardian, or other legal representative of the owner, or any person in possession of real property under written contract of purchase duly recorded, shall be deemed to be the owner thereof for the purposes of this act. In the case of property held by tenancy in common, if any co-tenant sign a protest under this act, only the proportionate share of the frontage thereof represented by his interest therein shall be counted in determining the amount of frontage represented by such protest. In the event that the change or modification of grade proposed by the ordinance or resolution of intention is only on one side of any public street, lane, alley, court or other place, or portion thereof, only the owners of the real property fronting on the side of such public street, lane, alley, court or other place, or portion thereof where such change or modification of grade is proposed to be made, shall be entitled to make or file a protest under the provisions of this act. If the grade of any public street, lane, alley, court, or other place, or portion thereof, has been heretofore, or shall be hereafter changed or modified, nothing in this act contained shall be construed to prevent any subsequent change or changes, modification or modifications of grade of any such public street, lane, alley, court or other place, or portion thereof.

Proof of publication of any notice made by affidavit.

5a. Proof of publication of any notice required by this act shall be made by affidavit, as provided in the Code of Civil Procedure, and proof of the posting of any such notice shall be made by the affidavit of the person posting the same, setting forth the facts regarding such posting. It shall be the duty of any officer who is required by this act to have any notice published or posted, to obtain and file in his office the affidavit or affidavits in proof thereof; provided, that his failure so to do shall not affect the validity of any proceedings under this act. Any such affidavit so filed shall be prima facie evidence of the facts therein stated regarding such publication or posting. [New section, approved April 10, 1911. Stats. 1911, p. 854.]

Definition of phrases.

6. The following words and phrases, where used in this act, shall have the following meanings:

1. The terms "municipality" or "city" include every incorporated city, city and county, or other corporation organized for municipal purposes.

2. The terms "city council" and "council" include any body or board in which by law is vested the legislative power of any city.

3. The terms "clerk" and "city clerk" shall include any person or officer who shall be clerk of the city council.

4. The term "superintendent of streets" includes any officer or board whose duty it is by law to have the care or charge of streets, or the improvement thereof, in any city. In any city where there is no superintendent of streets, or no such board, the legislative body is hereby authorized to designate some other officer to perform the duties imposed by this act on the superintendent of streets, and all the provisions hereof applicable to the superintendent of streets shall apply to the officer so designated.

Which acts are not affected by this act. Act liberally construed.

7. This act shall in no wise affect an act entitled "an act to provide for work upon streets, lanes, alleys, courts, places and sidewalks, and for the construction of sewers within municipalities," approved March 18, 1885, or amendments thereto; or an act entitled "An act to amend an act (entitled) "An act to provide for work upon streets, lanes, alleys, courts, places, and sidewalks, and for the construction of sewers within municipalities," approved March 18, 1885, by adding thereto certain new and additional sections, to provide the mode of carrying into effect certain provisions of said act relative to changing grades," approved March 31, 1891, or amendments thereto, or any other acts on the same subject; but is intended to and does provide an alternate system of proceedings for changing or modifying the grades of public streets, lanes, alleys, courts, or other places in municipalities; and it shall be within the discretion of the city council of any municipality to proceed in making any such change or modification of grade, either under the provisions of this act, or under the provisions of said acts hereinbefore mentioned, or amendments thereto; but when any proceedings are commenced under this act, the provisions of this act, and of such amendments thereto as may be hereafter adopted, and no other, shall apply to all such proceedings, and any provisions contained in said acts, or in any acts in conflict with the provisions hereof, shall be void and of no effect as to the proceedings commenced under the provisions of this act. The election of the city council to proceed under the provisions of this act shall be expressed in its ordinance of intention to order any change or modification of grade. The provisions of this act shall be liberally construed to promote the objects thereof. This act may be designated and referred to as the "Change of Grade Act of 1909."

Act effective immediately.

8. This act shall take effect immediately.



LOCAL IMPROVEMENT ACT OF 1919

An act to provide for local improvements in or upon streets, avenues, lanes, alleys, courts, places, public ways, property, or rights of way within or belonging to municipalities, and providing for the issuance and payment of bonds to represent assessments levied for such improvements.

(Approved May 16, 1919, Stats. 1919, p. 527. In effect July 22, 1919.)

The people of the State of California do enact as follows:

Public streets defined.

Section 1. All streets, avenues, lanes, alleys, places, or courts in the municipalities of this state, now open or dedicated, or which may hereafter be opened or dedicated to public use, shall be deemed and be held to be open public streets, lanes, alleys, places, or courts, for the purpose of this act; and the city council of any municipality is hereby empowered to establish and change the grades of said streets, lanes, alleys, places, or courts, and fix the width thereof, and is hereby invested with jurisdiction to order to be done thereon any of the work mentioned in section two of this act, under the proceedings hereinafter described.

The word "street," as used in this act, shall be deemed, and is hereby declared, to include avenues, highways, lanes, alleys, crossings, or intersections, courts and places, which have been dedicated and accepted according to law or in common and undisputed use by the public for a period of not less than five years next preceding; and the term "main street" means such actually opened street or streets as bound a block; and the word "blocks," whether regular or irregular, means such blocks as are bounded by main streets, or partially by a boundary line of the city.

What work may be done.

Sec. 2. Whenever the public interest or convenience may require, the city council is hereby authorized and empowered to order the whole or any portion or portions, either in length or width of any one or more of the streets, avenues, lanes, alleys, courts, places, public ways, property, or rights of way, of any such city graded or regraded to the official grade, planked or replanked, paved or repaved, macadamized, or remacadamized, graveled or regreveled, piled or repiled, capped or recapped, oiled or reoiled; and to order the construction or reconstruction therein of sidewalks, crosswalks, culverts, bridges, gutters, curbs,

steps, parkings and parkways; sewers, ditches, drains, conduits and channels for sanitary and drainage purposes or either or both thereof, with outlets, cesspools, manholes, catch basins, flush tanks, septic tanks and other appurtenances; pipes, hydrants and appliances for fire protection, or for the service of water for domestic or sanitary uses; viaducts, conduits and subways, breakwaters, levees, bulkheads and walls of rock or other material; tunnels or subterranean avenues for public travel; poles, posts, wires, pipes, conduits, lamps and other suitable or necessary appliances for the purpose of lighting said streets, avenues, lanes, alleys, courts, places or public ways; the planting of trees thereon, and any work which shall be deemed necessary to improve the whole or any portion of such streets, avenues, sidewalks, lanes, alleys, courts, places, or public ways or property or rights of way, of such city.

The city council may include in one proceeding and order, any of the different kinds of work mentioned in this act, and may include such work on any number of streets, property and rights of way, or any portion thereof, contiguous or otherwise, in one proceeding or one contract, or both, and may except therefrom any of said work already done to the official grade, and which may be in good condition and repair.

The term "city council" is hereby declared to include any body or board, which, under the law, is the legislative department of the government of any city.

Report of city engineer.

Sec. 3. Before ordering any work done or improvement made, which is authorized by section two of this act, the city council shall pass a resolution referring the proposed work to the city engineer, if there be one, and, if not, to some civil engineer employed by them for the purpose and named in the resolution, instructing him to make them a report in writing containing his recommendations as to the best method of doing said work or making said improvement, together with the following:

(a) A statement of the nature of the proposed work or improvement, with plans and specifications therefor;

(b) A description of the district or districts which, in his opinion, would be benefited by the proposed work or improvement and should be assessed to pay the cost thereof, excepting and excluding therefrom any lot or portions of said district or districts which would not be benefited by the proposed work. Said district or districts, may be described by the exterior boundaries thereof or by giving the numbers of the lots and blocks, according to the official or recorded map or maps, or by any other method which will clearly indicate the lots and lands intended to be included therein;

(c) An estimate of the cost of said improvement;

(d) The assessed value of all the real property included within said district or districts and proposed to be assessed for the work,

exclusive of buildings or other improvements, according to the last equalized assessment roll used for purposes of taxation by said city;

(c) A plat showing said district or districts and the subdivisions of property therein, as shown by the last equalized assessment roll.

The engineer may submit a number of districts, which, according to his estimate, would be benefited in different degrees by the proposed improvement, in which case he shall specify the proportion of benefit which each district would receive.

Resolution of intention.

Sec. 4. Upon receipt of the report from the engineer, the city council shall consider and act upon the same, and may adopt the report as submitted or as they may modify the same. After adoption, the city council shall pass a resolution of intention, briefly describing the proposed work or improvement, referring to the plans and specifications therefor, and briefly describing the district or districts which would be benefited by and assessed for the proposed work or improvement, and the proportion of benefit said district or districts would derive therefrom. The resolution shall contain a declaration to the effect that serial bonds, bearing interest at a rate therein to be determined, but not to exceed six per cent per annum, will be issued to represent the unpaid assessments. The resolution shall also contain a notice of the day, hour, and place, when and where any persons having any objections to the proposed work or improvement may appear before the city council and show cause, if any they have, why the proposed work or improvement should not be carried out in accordance with said resolution, which time shall not be less than fifteen nor more than forty days from the day of the passage of said resolution.

The city council may, in its discretion, order, that any part of the cost and expenses of any of the work mentioned in this act be paid out of the treasury of the municipality from such fund as the council may designate, in which case it shall be so stated in the resolution of intention.

Whenever a part of such cost and expenses is so ordered to be paid, the superintendent of streets, in making up the assessment heretofore provided for such cost and expenses, shall first deduct from the whole cost and expenses such part thereof as has been so ordered to be paid out of the municipal treasury, and shall assess the remainder of said cost and expenses proportionately upon the lots and lands liable to be assessed for such work, and in the manner hereinafter provided.

Whenever any lot, piece or parcel of land belonging to the United States, or to the State of California, or any lot, piece or parcel of land belonging to any county, city, public agent, mandatory of the government, school board, educational, penal or reform institution, or institution for the feeble-minded or the insane, and being in use in the performance of any public function, shall be included within the

district or districts declared by the city council in its resolution of intention to be the district or districts to be assessed to pay the cost and expenses thereof, said city council may, in the resolution of intention, declare that said lots, pieces or parcels of land, or any of them, shall be omitted from the assessment thereafter to be made to cover the cost and expenses of said work or improvement, in which case the total cost and expenses shall be assessed on the remaining lots and lands in the assessment district or districts; provided, that such part of the cost and expenses may be paid out of the municipal treasury as hereinbefore provided.

Establish grade.

Sec. 5. The council may, in the resolution of intention, by reference to the plans and specifications or otherwise, fix and establish the grade at which the work is to be done, which grade so fixed and established may be either the first establishment of such grade or the changing of an existing official grade.

In such case the plans adopted for the proposed work shall show the existing official grade, if any, and the grade at which the proposed work is to be done.

In the event the proposed work is to be done at a grade other than an existing official grade, the resolution of intention and the notices of improvement shall recite the fact and refer to the plans and specifications for further particulars as to such proposed grade.

Any property owner whose property is to be assessed to pay the costs and expenses of the proposed improvement, may at the time fixed in the resolution of intention for the hearing of objections to the proposed work or improvement, appear before the city council and make objections to the grade so established or changed in said resolution of intention.

Failure to make such objections shall be deemed to be a waiver of all objections to such grade, and shall operate as a waiver of all claims for damages and shall constitute a bar to any subsequent action looking either to the prevention of the work or the recovery of damages or compensation on account of the performance of the work to such grade.

Publishing and posting notices.

Sec. 6. The city clerk shall cause said resolution of intention to be published twice in one or more daily or weekly newspapers published and circulated within said city. The street superintendent shall cause to be conspicuously posted along the line of said contemplated work or improvement, at not more than three hundred feet in distance apart, but not less than three in all, notices of the passage of said resolution, briefly describing the district or districts to be benefited and assessed, and containing an announcement that serial bonds, bearing interest at a rate not to exceed six per cent per annum, will be

issued to represent the unpaid assessments. Said notices shall be headed "notices of improvement," in letters of not less than one inch in length; and shall, in legible characters, state the fact of the passage of the resolution of intention, its date, and briefly, the work or improvement proposed, and shall refer to the resolution of intention for further particulars. Said notices shall also contain a notice of the day, hour, and place fixed for hearing objections as above mentioned.

Notifying property owners by mail.

Sec. 7. The city clerk shall, immediately upon the passage of said resolution of intention, mail, postage prepaid, to each property owner whose property is to be assessed to pay the cost and expenses of said work and improvement, at his last known address as the same appears upon the tax rolls of said city, or when no address so appears, to the general delivery of the United States post office in said city, a postal card containing a notice which shall be in substantially the following form (filling blanks):

"You are hereby notified that on the.....day of.....the city council of the city of....., California, passed a resolution of intention providing for the improvement of.....street between.....street and.....street. You are hereby referred to the said resolution for further particulars. Property belonging to you is to be assessed for this improvement.

.....City clerk."

If any lots or parcels of land in the assessment district or districts be assessed to "unknown owners" on the tax rolls of said city, no postal cards containing such notice need be mailed to the owners thereof. The city clerk shall, upon the completion of the mailing of said postal cards, file in his office an affidavit setting forth the time and manner of the compliance with this requirement; provided, that the failure of the city clerk to mail said cards, or the failure of the property owners to receive the same shall in nowise affect the validity of the proceedings or prevent the city council from acquiring jurisdiction to order the work.

Invite sealed bids.

Sec. 8. The city council shall cause notice of said work inviting sealed proposals or bids for doing the work and referring to the plans and specifications on file, to be published twice in a daily or weekly newspaper, published and circulated in said city, and provide that the same will be received and opened on the same day, hour, and place fixed for hearing objections as aforementioned. All proposals or bids offered shall be accompanied by a check payable to the city, certified by a responsible bank, for an amount which shall not be less than ten per cent of the aggregate of the proposal.

Protests and hearing.

Sec. 9. At any time not later than the hour set for receiving proposals and hearing objections to the proposed work or improvement, any owner of property liable to be assessed for said work or improvement may make written protests or objections against the work or improvement or against the district or districts, to be assessed, or both, or make any objection of any character to said work. Said objections or protests must be delivered to the clerk of the city council prior to the hour set for hearing, and no other protests or objections shall be considered by said council.

At the time fixed for said hearing and the opening of bids as aforementioned, the city council shall first cause all bids received to be publicly opened and publicly declared, after which the same shall be temporarily laid upon the table while the council proceeds to hear and consider objections, if any there be. The council may continue the hearing from time to time and postpone final consideration of the proposals or bids submitted. The decision of the council on all protests or objections shall be final and conclusive; provided, that where the council finds that the objections or protests filed have been made by a majority of the property owners of the district, or of all the districts if there be more than one district, and that they are also the owners of more than one-half of the area of the property within the district or districts to be assessed for the proposed work or improvement, no further proceedings shall be taken for a period of six months from the date of the finding of the council as to the sufficiency of the protest.

If no protests or objections in writing have been delivered to the clerk up to the hour set for the hearing, or if protests have been heard and overruled, thereupon the city council shall be deemed to have acquired jurisdiction to order the work and award the contract.

Nothing herein contained shall be deemed to prevent the council from sustaining any objection filed, or to abandon the proceedings for the work or improvement prior to the awarding of the contract.

May reject bids.

Sec. 10. The city council may reject any and all proposals or bids should it deem this for the public good, and also the bid of any party who has been delinquent or unfaithful in any formed contract with the municipality, and shall reject all proposals or bids other than the lowest regular proposal or bid of any responsible bidder, and may award the contract for said work or improvement to the lowest responsible bidder on the plans and specifications selected at the prices named in his bid. No contract shall be awarded on any proceeding, if more than one year has elapsed since the passage of the resolution of intention for such proceeding, but in such case a new proceeding will have to be instituted. If the bids are rejected or no bids received, the city council may within six months thereafter readvertise for and receive proposals

or bids for the performance of the work as in the first instance, without further proceedings. The checks accompanying the accepted proposals or bids shall be held by the city clerk until the contract for doing said work has been entered into, but if said bidder fails, neglects or refuses to enter into the contract to perform said work or improvement, as hereinafter provided, then the certified check accompanying his bid and the amount therein mentioned shall be forfeited to said city and shall be collected by it and paid into the general fund.

If bidder is negligent readvertise for bids.

Sec. 11. If the original bidder neglects, fails or refuses to enter into the contract within fifteen days after the same has been awarded to him, then the city council, without further proceedings, shall again advertise for proposals or bids, as in the first instance, and award the contract for said work to the lowest regular responsible bidder. Should no bids be received in response to this second call, the council may again advertise for and receive bids under the same proceedings, at any time within six months from the time set for the last reception of bids, and let the contract to the then lowest bidder, and such delay shall in no way affect the validity of any of the proceedings, unless such delay is contrary to the provisions of section ten hereof.

Contractors' bonds.

Sec. 12. All contractors shall, at the time of executing any contract for street work, execute a bond to the satisfaction and approval of the superintendent of streets of said city, with two or more sureties, payable to such city, in a sum equal to twenty-five per cent of the contract price, conditioned for the faithful performance of the contract; and the sureties shall justify before any person competent to administer an oath in double the amount mentioned in said bond, over and above all statutory exemptions. Before being entitled to a contract, the bidder to whom the award was made, must advance to the superintendent of streets, for payment by him, all incidental expenses already incurred by the city for said work or improvements. In case the work is abandoned by the city before the letting of the contract, the incidental expenses incurred previous to such abandonment shall be paid out of the city treasury.

The term "incidental expenses" as used in this act, shall include the compensation of the city engineer, or street superintendent, for work done by him; also, the cost of printing, advertising, posting and mailing, legal expenses incurred and the compensation of the person appointed by the superintendent of streets to take charge of and superintend or inspect any of the work. All demands for incidental expenses mentioned in this subdivision shall be presented to the street superintendent by itemized bill, duly verified by oath of the demandant.

Bond for labor and material.

Sec. 13. Every contractor, person, company, or corporation to whom is awarded any contract under this act, shall, before executing said contract, file with the superintendent of streets a good and sufficient bond, approved by the mayor, or other chief executive, in a sum not less than one-half of the total amount payable by the terms of said contract; such bond shall be executed by the principal and at least two sureties, who shall qualify for double the sum specified in said bond, and said bond shall be made to inure to the benefit of any and all persons, companies, or corporations who perform labor on, or furnish materials to be used in the said work or improvement, and shall provide that if the contractor, person, company, or corporation to whom said contract was awarded fails to pay for any materials so furnished for the said work or improvement, or for any work or labor done thereon of any kind, then the sureties will pay the same, to an amount not exceeding the sum specified in said bond. Any materialman, person, company, or corporation, furnishing materials to be used in the performance of said work specified in said contract, or who performed work or labor upon the said improvement, whose claim has not been paid by the said contractor, company or corporation, to whom the said contract was awarded, may, within sixty days from the time said improvement is completed, file with the superintendent of streets a verified statement of his or its claim, together with a statement that the same, or some part thereof, has not been paid, whereupon the amount of said claim shall be withheld from payment for a period of ninety days or until settled. Within ninety days after the filing of such claim, the person, company, or corporation, filing the same or their assigns must commence an action on said bond for the recovery of the amount due thereon.

Supt. of Streets gives written contracts.

Sec. 14. The superintendent of streets is hereby authorized in his official capacity to make all written contracts, and receive all bonds authorized by this act, and to do any other act, either express or implied, that pertains to the street department under this act.

Said contract shall contain an express notice that, in no case, except where it is otherwise provided by law or the city charter will the city or any officer thereof be liable for any portion of the expense or for any delinquency of persons or property assessed.

The superintendent of streets shall fix the time for the commencement of the work, which shall not be more than fifteen days from the date of the contract, and for the completion thereof; and the work shall be prosecuted with diligence from day to day thereafter to completion. He may extend the time so fixed from time to time, under the direction of the city council. All applications for such extensions must be in writing and be filed in his office before the expiration of

the original time fixed in the contract, or of the time theretofore granted by extension, as the case may be. The work must be done in accordance with the plans and specifications and under the direction and to the satisfaction of the street superintendent; provided, however, the city council may, by resolution provide that the work shall be done under the supervision and to the satisfaction of the city engineer instead of the street superintendent.

· Nothing herein contained, will be deemed to prohibit the city council from making payments to the contractor from time to time as the work progresses.

Assessment levied and filed.

Sec. 15. After the contractor has fulfilled his contract to the satisfaction of the street superintendent or city engineer, as the case may be, such officer shall make an assessment on the lots and lands within the district or districts to cover the sum due for the work performed and specified in the contract, including all incidental expenses, excluding therefrom any lot or portion of said district or districts which have heretofore been declared not to be benefited by the work or improvement, which assessments shall be in proportion to the assessed value of all the real property in the district or districts liable to assessment therefor, exclusive of improvements, in the proportional amount of benefit which each district will derive from the proposed work, as provided in section three hereof. Such assessment shall be filed by the street superintendent with the tax collector of said city.

Publication of assessment due.

Upon satisfactory completion of the work, the street superintendent or city engineer, as the case may be, shall cause a notice of such completion to be published twice in a daily or weekly newspaper published and circulated in said city, notifying all owners of real property within the said district or districts that assessments to pay for the cost of said work and improvement will be due and payable at the office of the tax collector within thirty days from the date of the first publication of said notice, and that unless said assessments are paid on or before said date, (stating the time), serial bonds will be issued to represent such unpaid assessments, as aforestated in section four hereof.

Protests on assessments.

Sec. 16. Any action to contest the validity of an assessment levied under the provisions of this act, or of any proceeding of the city council, or any act of any municipal officer under the provisions of this act, must be commenced within sixty days after the adoption by the city council of the resolution awarding the contract, or within sixty days after the commission or omission of the act complained of, as the case may be; and any appeal taken from a final judgment in such action shall be perfected within sixty days after the entry thereof.

Issuance of bonds.

Sec. 17. After the full expiration of thirty days from the date of the first publication of the notice mentioned in section fifteen hereof, the tax collector shall make and file with the clerk of the city council a complete list of all assessments unpaid, together with an identifying number of each lot and block, according to the engineer's plat, and the assessed value thereof. The city council shall then cause bonds to be issued for the amount of the aggregate of the unpaid assessments.

For the purposes of identification and recordation each proceeding taken under this act shall be given a different identifying number, and the property assessed therefor shall be known as "local improvement district number", specifying the number thereof. The city council shall prescribe the denominations of said bonds, which shall be in convenient amounts not necessarily equal. Said bonds shall be dated the thirty-first day after the first publication of said notice aforementioned.

The city council shall prescribe the form of said bonds, and of the interest coupons attached thereto. Said bonds shall be payable in the following manner:

A part, to be determined by the city council, which shall not be less than one-twentieth part of the whole amount of such indebtedness, shall be payable each and every year, on a day and date, and at a place to be fixed by said council and designated in such bonds, together with the interest on all sums unpaid on such date, until the whole of said indebtedness shall have been paid.

The bonds shall be issued in such denomination as said council may determine, except that no bond shall be of a greater denomination than one thousand dollars, and shall be payable on the day and at the place fixed in such bonds, and with interest at the rate specified in such bonds, which rate shall not be in excess of six per centum per annum, and shall be paid semi-annually; said bonds shall be signed by the chief executive of the municipality, or by such other officer thereof as the city council shall, by resolution adopted by a two-thirds vote of all its members, authorize and designate for that purpose, and also signed by the treasurer thereof, and shall be countersigned by the city clerk. The interest coupons on said bonds shall be numbered consecutively, and signed by the treasurer of such municipality or by his engraved or lithographed signature. In case any officer whose signature or countersignature appears on the bonds or coupons shall cease to be such officer before the delivery of such bonds to the purchaser, such signature or countersignature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until the delivery of the bonds.

Form of bonds.

Sec. 18. Said bonds shall be conclusive evidence of the validity of all proceedings leading up to their issuance.

They shall be substantially in the following form:

\$.....

No.....

IMPROVEMENT BOND.

City (or town) of.....

Under and by virtue of the act of the legislature of the State of California, known as the local improvement act of 1919, the..... of..... of said state, will pay to the bearer, out of the fund hereinafter designated, at the office of the treasurer of said..... on the..... day of....., 19.....,dollars, in gold coin of the United States of America, with interest thereon in like gold coin, at the rate of..... per cent per annum, payable semi-annually on the..... day of..... and..... of each year from the date hereof, upon presentation and surrender of the proper interest coupons hereto attached, as they respectively become due.

This bond is issued pursuant to the constitution and statutes of the State of California, and to the ordinances, resolutions, and proceedings of said duly adopted and taken. It is one of a series of bonds of like date and effect issued in behalf of improvement district number, of said, and is payable out of the redemption fund provided for said improvement district exclusively.

It is hereby certified, recited and declared that all the acts, conditions and things required by law to exist, happen and be performed precedent to and in the issuance of this bond have existed, happened and been performed in time, form and manner as required by law, and that provision has been made as required by the provisions of said act for the collection of an assessment to pay the interest on this bond as it falls due and also provisions to constitute a sinking fund for the payment of the principal of this bond on or before maturity.

In witness whereof, said..... of..... has caused this bond to be executed under its corporate seal, signed by its chief executive and treasurer, and countersigned by its clerk and has caused the interest coupons hereto attached to be signed by the engraved or lithographed signature of its treasurer, and this bond to be dated the..... day of....., 19.....

Countersigned.

.....
Clerk of the.....of.....

.....
Mayor (or other title)

.....
Treasurer of the.....of.....

Bonds registered.

Sec. 19. Said bonds may be surrendered by the holder to the treasurer for registration in accordance with the provisions of any law applicable to the registration of the municipal bonds of the city, and thereafter the principal and interest thereon shall be paid to the proper registered owner thereof.

Sale of bonds.

Sec. 20. The city council may issue and sell the bonds, of such district, authorized as hereinabove provided, at not less than par value, and all the proceeds of the sale of such bonds shall be placed in the treasury of such municipality to the credit of the proper district fund and shall be applied exclusively to the work or improvement for which the contract was awarded.

If all bids for said bonds are rejected or if no bids are received, the council shall authorize the city treasurer to deliver said bonds to the contractor, in which case such delivery shall constitute full satisfaction of the sum due him on said contract.

The city council shall, at the time of fixing the general tax levy, and in the manner for such general tax levy provided, exclusive, however of any assessments on improvements, levy and collect an assessment each year on the property in such district or districts sufficient to pay the interest on such bonds for that year, and such portion of the principal thereof as will become due before the time for making the next general tax levy; each annual assessment for the payment of the interest and principal shall be based on the assessed value of each respective parcel or lot, at the time the work or improvement was ordered, and in the degree of benefits received, as shown on the assessment list hereinbefore mentioned. Said assessments when levied and collected shall be paid into the treasury of said city and be used for the payment of the principal and interest of such bonds and for no other purpose.

Sale for delinquent assessments.

Sec. 21. The said assessments shall be payable and become delinquent at the same times and in the same proportionate amounts and bear the same proportionate penalties after delinquency as the general municipal taxes on real property. Upon default in payment, the lands securing such assessments shall be sold in the same manner in which real property in such city is sold, for the nonpayment of general municipal taxes, and be subject to redemption in the same manner as such real property is redeemed from such delinquent sale, and upon failure or redemption shall in like manner pass to the purchaser. The city may be the purchaser at any delinquent sale in like manner in which it becomes or may become the purchaser of property sold for nonpayment of the general municipal property tax, and in the event

of its so becoming the purchaser shall pay and transfer into said redemption fund the amount of the delinquent assessments. In cases where the municipal property tax is collected by the county or city and county officials, and sales for nonpayment of such taxes are made to the state, the state shall be the purchaser at any such sale, but shall hold the title acquired at such sale upon behalf of the city and shall account to the city for any moneys received upon redemption or from the sale of such property, the city for such purposes of this act being deemed the real purchaser. In other cases where under the law, the city is not always the purchaser at sales for delinquent municipal taxes, the city shall become such purchaser at any delinquent sale hereunder where there is no such purchaser; provided, that the city council may, in its discretion, order certain lots or lands not to be sold, and order and direct the city attorney to commence an action in the name of the city against the owner or owners of such lots or lands so delinquent, to recover the amount of such delinquent tax, together with the interest thereon, and for costs of suit and a penalty of twenty-five per cent on the amount of such delinquent assessment.

All the owners of property delinquent as aforesaid may be joined as defendants in one action; provided, however, the complaint in such case shall set forth the amount due on each lot or parcel of land separately assessed, together with the name of the owner or owners thereof.

Special tax to protect city.

Sec. 22. The city council may, at the time of fixing the annual tax rate and levying the taxes to be collected for general municipal purposes, levy a special tax upon the taxable property in the city for the purpose of paying for the lands purchased or to be purchased at such tax sales, but not to exceed ten cents on each one hundred dollars of assessable property. Such special tax shall be in addition to all other taxes levied for municipal purposes, and shall be computed, entered and collected in the same manner, and by the same persons, and at the same time and with the like penalties as other municipal taxes of said city. In the event of a surplus remaining in the redemption fund after payment of all said bonds and the interest thereon, the same shall first be applied to repayment to said city of any special taxes so levied, less its recovery on the lands purchased at delinquent sale, and also of any costs incurred by it hereunder.

Effect of certificate of sale and deed.

Sec. 23. In the event of sale by the tax collector of any lot or parcel of land for nonpayment of any assessment thereon levied pursuant to the provisions of this act, then any certificate of such sale and deed issued pursuant thereto, shall be prima facie evidence of the regularity of all proceedings theretofore had, and such deed shall constitute a convey-

ance to the grantee of the absolute title to the lots or lands described therein, free of all incumbrances, except the lien for other state, county and municipal taxes.

Assessments may be released.

Sec. 24. After bonds have been issued as herein provided, any interested property owner may release his property and pay up the unpaid assessment against the same by depositing with the city treasurer the total unpaid balance of his assessment due, together with the total amount of the interest which would become due semiannually on his proportion of the assessment, in which case the treasurer shall deposit such payments into the fund provided for the redemption of said bonds, and the city clerk shall record the release of such property on the records of his office.

Definition of "owner."

Sec. 25. The person owning the fee, or the person in whom, on the day the proceeding or action is commenced, appears the legal title to the lots and lands, by deeds duly recorded in the county recorder's office, or the person in possession of the land, lots, or portions of lots or building under claim, or exercising acts of ownership over the same for himself, or as the executor, administrator, or guardian, of the owner, shall be regarded, treated, and deemed to be the "owner" (for the purpose of this act), according to the intent and meaning of that word as used in this act. And in case of property leased, the possession of the tenant or lessee holding and occupying under such persons shall be deemed to be the possession of such owner.

Title of act.

Sec. 26. This act shall be known and may be referred to as the "local improvement act of 1919." It shall in nowise affect any other existing acts relating to street work or local improvements within municipalities, but is intended to and does provide an alternate system of proceedings for public improvements, and it shall be discretionary with the legislative body of any municipality to proceed in making such improvements either under the provisions of this act or under the provisions of other said acts.

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No.

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|-------|-------------------------|-------------------------|--------------------------|---|---|
| 6000 | Resolution | Ordering | Plans and Specifications | | |
| 6001 | " | Adopting | " | " | " |
| 6002 | " | of Intention | | | |
| 6003 | Aff. of Pub. of | Resolution of Intention | | | |
| 6004 | Notice of | Improvement | | | |
| 6005 | Aff. of Posting | Notice of Improvement | | | |
| 6006 | Resolution | Overruling | Protest | | |
| 6007 | Resolution | Ordering | the Work | | |
| 6008 | Notice | Inviting | Sealed Proposals | | |
| 6009 | Aff. of Post. Notice | Inviting | Sealed Proposals | | |
| 6010 | Proposal | | | | |
| 6011 | Resolution of | Award | | | |
| 6012 | Notice of | Award of | Contract | | |
| 6013 | Contract | | | | |
| 6014 | Contractors | Bond for | Faithful Performance | | |
| 6015 | " | " | " Labor and Material | | |
| 6016 | Cert. of Engineer and | Assessment— | Frontage | | |
| 6016A | Continuation | Sheet | " | " | |
| 6016B | Individual | | " | " | |
| 6017 | Cert. of Engineer and | Assessment— | District | | |
| 6017A | Individual | | " | " | |
| 6018 | Diagram | | | | |
| 6019 | Warrant and St. Sup't's | Cert. | | | |
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|------|--------------------------------------|------------|--|--|--|
| 6020 | Cert. of Sale of R. E. for Non Pay't | Local Imp. | | | |
| | Bonds | | | | |
| 6021 | Deed Under | 1911 Act | | | |

